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chapter I-13.2.2

DEPOSIT INSTITUTIONS AND DEPOSIT PROTECTION ACT

Note *This Act was formerly entitled "Deposit Insurance Act". The title was amended by section 345 of chapter 23 of the statutes of 2018.*

1966-67, c. 73; 2018, c. 23, s. 345.

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TITLE I

PURPOSE, SCOPE AND DEFINITIONS

2009, c. 58, s. 2; 2018, c. 23, s. 346.

1. This Act applies to the supervision and control of the activities of authorized deposit institutions, in particular their deposit institution activities and their other financial institution activities. In addition, it fosters the stability of the financial system in Québec by establishing a plan to protect deposits of money in the event of the actual or apprehended insolvency of an authorized deposit institution.

1966-67, c. 73, s. 1; 1968, c. 71, s. 1; 1977, c. 5, s. 14; 1987, c. 95, s. 368; 1988, c. 64, s. 587; 1999, c. 40, s. 27; 2000, c. 29, s. 618; 2002, c. 45, s. 179; 2002, c. 70, s. 186; 2002, c. 45, s. 179; 2004, c. 37, s. 90; 2009, c. 58, s. 3; 2018, c. 23, s. 347.

1.0.1. Deposit institution activities consist in soliciting and receiving deposits of money from the public.

2018, c. 23, s. 348.

1.1. This Act applies to all deposits of money made in Québec.

However, this Act does not apply to the following deposits, funds, sums or instruments:

(1) *(paragraph repealed);*

(2) deposits made with banks that are not member institutions of the Canada Deposit Insurance Corporation established by the Canada Deposit Insurance Corporation Act (Revised Statutes of Canada, 1985, chapter C-3);

(3) deposits whose term exceeds that prescribed by the regulations;

(4) funds obtained at the time of an issue of securities in accordance with the Securities Act (chapter V-1.1), unless otherwise provided by the regulations;

(5) sums payable under an insurance or annuity contract issued by an insurer carrying on business in Québec, in accordance with the Insurers Act (chapter A-32.1);

(6) a promissory note payable in one year or less and, if distributed to a natural person, evidencing a debt of $50,000 or more;

(7) any other deposit determined by regulation.

Despite the preceding paragraphs, the Minister may, exceptionally and for a period determined by the Minister but not exceeding two years, determine that this Act applies to a deposit to which it does not otherwise apply.

2009, c. 58, s. 3; 2018, c. 23, s. 349; 2021, c. 15, s. 90.

1.2. For the purposes of this Act, financial institution activities are, in addition to deposit institution activities and credit, the activities that a legal person may not carry on without being an authorized financial institution or a bank within the meaning of the Bank Act (S.C. 1991, c. 46).

2009, c. 58, s. 3; 2018, c. 23, s. 350.

1.3. The following are authorized financial institutions:

(1) insurers authorized under the Insurers Act (chapter A-32.1);

(2) financial services cooperatives within the meaning of the Act respecting financial services cooperatives (chapter C-67.3);

(3) trust companies authorized under the Trust Companies and Savings Companies Act (chapter S-29.02);

(4) authorized deposit institutions other than financial institutions referred to in paragraphs 1 to 3; and

(5) legal persons registered as dealers or advisers under the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1) or registered as investment fund managers under the latter Act.

2018, c. 23, s. 350.

1.4. In the case of a legal person constituted under the laws of a jurisdiction other than Québec, the organ on which the powers usually conferred on a board of directors are conferred is considered such a board. In that context, "director" means a member of that organ.

A legal person constituted under the laws of a jurisdiction other than Québec that, in a manner similar to that of a business corporation, confers voting rights otherwise than on a one member, one vote basis is considered a business corporation. If such rights are conferred through securities that it issues, the securities are considered shares.

2018, c. 23, s. 350.

1.5. For the purposes of this Act, "holder of control" of the following groups means,

(1) in the case of a business corporation, the holder of shares conferring more than 50% of the voting rights or whoever can otherwise choose the majority of its directors;

(2) in the case of a federation of mutual companies, its member mutual companies;

(3) in the case of a partnership that is a limited partnership, the general partner, and in the case of any other partnership, the partner who can determine the outcome of collective decisions, if applicable;

(4) in the case of a trust, the trustee; and

(5) in the case of co-owners in indivision, the manager or, in the absence of a manager, if one of the co-owners can determine the outcome of collective decisions made by majority vote, that co-owner.

No one is the holder of control of a financial services cooperative, of a mutual company or of any other group that confers voting rights on a one member, one vote basis.

2018, c. 23, s. 350.

1.6. Each of the following is the holder of a significant interest in a business corporation:

(1) the holder of a significant interest in the decisions of the corporation, that is, whoever can exercise 10% or more of the voting rights attached to the shares issued by the corporation; and

(2) the holder of a significant interest in the corporation's equity capital, that is, the holder of shares issued by the corporation representing 10% or more of its equity capital.

2018, c. 23, s. 350.

1.7. Control, in cases which allow it, also results from participation in the concerted and ongoing exercise of rights within the group controlled or of powers over that group, even though none of the participants in the exercise of such rights or powers would alone be the holder of control; in such cases, each of the participants is deemed to be the holder of control.

The same is true for a significant interest in the decisions of a business corporation; each of the participants in the concerted and ongoing exercise of voting rights attached to the shares issued by the corporation is deemed to be a holder of a significant interest.

2018, c. 23, s. 350.

1.8. The following are deemed to participate in the concerted and ongoing exercise of their rights or powers and, consequently, to be the holders of control of a group:

(1) the participants that are controlled by a same holder of control as well as that holder, if the holder is a participant;

(2) the trustees of a same trust; and

(3) the natural persons between whom family ties are considered to exist.

The participants described in the first paragraph are deemed to participate in the concerted and ongoing exercise of their voting rights or of their rights in shares with a view to being the holders of a significant interest in a business corporation.

The presumptions under the first and second paragraphs regarding member mutual companies of a same federation also apply to the other member mutual companies of that federation that neither have rights within or powers over the group.

2018, c. 23, s. 350.

1.9. The holder of control of a group is also, if that group is the holder of control of another group, the holder of control of that other group.

2018, c. 23, s. 350.

1.10. For the purposes of this Act, the holder of control of a group is deemed

(1) to hold any significant interest that is held by the group;

(2) to hold such rights to acquire shares or other securities as are held by the group itself; and

(3) to exercise the voting rights that the group may exercise.

2018, c. 23, s. 350.

1.11. For the purposes of this Act, a security entitlement to a share or to another security is considered such a share or security, unless the holder of the security entitlement is a securities intermediary acting in that capacity.

“Securities intermediary” and “security entitlement” have the meaning assigned by the Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002).

2018, c. 23, s. 350.

1.12. Groups that have a common holder of control are affiliates, as is the holder of control, unless the latter is a natural person.

If one group among an aggregate of affiliated groups is an authorized deposit institution, the aggregate of affiliated groups is a financial group.

2018, c. 23, s. 350.

1.13. Economic ties are considered to exist only between

(1) natural persons between whom family ties are considered to exist;

(2) the holder of a significant interest in a business corporation and the business corporation itself;

(3) a partner in a partnership and the partnership;

(4) each of the partners in a same partnership;

(5) a legal person and its directors and officers; and

(6) a person and a succession or trust in which the person has a substantial interest similar to that of a beneficiary or in respect of which the person serves as liquidator of the succession, trustee or other administrator of the property of others, mandatary or depositary.

Economic ties include any other ties between persons or groups that the Autorité des marchés financiers may determine by regulation.

2018, c. 23, s. 350.

1.14. Family ties are considered to exist only between a person and

(1) his or her spouse;

(2) his or her children or spouse's children; and

(3) his or her parents or spouse's parents.

2018, c. 23, s. 350.

1.15. The contributed capital of a legal person is composed of the consideration paid to the legal person for,

(1) in the case of a business corporation, the shares of its share capital;

(2) in the case of a joint-stock company, the shares of its capital stock; and

(3) in the case of a cooperative, a financial services cooperative or a mutual company, the shares of its capital stock or share capital.

The contributed capital of a partnership is composed,

(1) in the case of a general partnership, of the contribution made by each partner to obtain a share in the partnership; and

(2) in the case of a limited partnership, of the contribution made by the special partners to the partnership's common stock.

2018, c. 23, s. 350.

1.16. "Equivalent scheme" means any law providing depositor protection similar to that provided by Title III of this Act.

2018, c. 23, s. 350.

TITLE II

SUPERVISION AND CONTROL OF DEPOSIT INSTITUTION ACTIVITIES

2002, c. 45, s. 180; 2018, c. 23, s. 351.

CHAPTER I

SUPERVISION AND CONTROL

2018, c. 23, s. 351.

2. The Autorité des marchés financiers (the Authority) shall supervise and control the carrying on of deposit institution activities in Québec.

1966-67, c. 73, s. 2; 1977, c. 5, s. 14; 2002, c. 45, s. 181; 2018, c. 23, s. 351.

2.1. *(Repealed).*

1983, c. 10, s. 1; 2002, c. 45, s. 182; 2004, c. 37, s. 90; 2018, c. 23, s. 351.

3. *(Repealed).*

1966-67, c. 73, s. 3; 1996, c. 2, s. 77; 1999, c. 40, s. 27; 2000, c. 56, s. 224; 2002, c. 45, s. 183.

4. *(Repealed).*

1966-67, c. 73, s. 4; 1999, c. 40, s. 27; 2002, c. 45, s. 183.

5. *(Repealed).*

1966-67, c. 73, s. 5; 1999, c. 40, s. 27; 2002, c. 45, s. 183.

6. *(Repealed).*

1966-67, c. 73, s. 6; 1977, c. 5, s. 14; 1983, c. 10, s. 2; 1983, c. 55, s. 161; 1997, c. 35, s. 9; 2002, c. 45, s. 183.

6.1. *(Repealed).*

1983, c. 10, s. 2; 2002, c. 45, s. 183.

6.2. *(Repealed).*

1983, c. 10, s. 2; 2002, c. 45, s. 183.

6.3. *(Repealed).*

1983, c. 10, s. 2; 2002, c. 45, s. 183.

7. *(Repealed).*

1966-67, c. 73, s. 7; 1983, c. 10, s. 2; 1997, c. 35, s. 10; 2002, c. 45, s. 183.

7.1. *(Repealed).*

1983, c. 10, s. 2; 1999, c. 40, s. 27; 2002, c. 45, s. 183.

8. *(Repealed).*

1966-67, c. 73, s. 8; 1983, c. 10, s. 2; 1997, c. 35, s. 11; 2002, c. 45, s. 183.

8.1. *(Repealed).*

1983, c. 10, s. 2; 2002, c. 45, s. 183.

8.2. *(Repealed).*

1983, c. 10, s. 2; 2002, c. 45, s. 183.

8.3. *(Repealed).*

1983, c. 10, s. 2; 1997, c. 35, s. 12; 2002, c. 45, s. 183.

9. *(Repealed).*

1966-67, c. 73, s. 9; 1983, c. 10, s. 2; 2002, c. 45, s. 183.

10. *(Repealed).*

1966-67, c. 73, s. 10; 1983, c. 10, s. 2; 1997, c. 35, s. 13; 2002, c. 45, s. 183.

10.1. *(Repealed).*

1983, c. 10, s. 2; 2002, c. 45, s. 183.

10.2. *(Repealed).*

1983, c. 10, s. 2; 2002, c. 45, s. 183.

11. *(Repealed).*

1966-67, c. 73, s. 11; 1983, c. 10, s. 2; 2002, c. 45, s. 183.

11.1. *(Repealed).*

1983, c. 10, s. 2; 2002, c. 45, s. 183.

12. *(Repealed).*

1966-67, c. 73, s. 12; 1983, c. 10, s. 2; 2002, c. 45, s. 183.

13. *(Repealed).*

1966-67, c. 73, s. 13; 1978, c. 15, s. 133, s. 140; 1983, c. 10, s. 2; 2000, c. 8, s. 242; 2002, c. 45, s. 183.

13.1. *(Repealed).*

1983, c. 10, s. 2; 2002, c. 45, s. 183.

14. *(Repealed).*

1966-67, c. 73, s. 14; 1983, c. 10, s. 2; 2002, c. 45, s. 183.

15. *(Repealed).*

1966-67, c. 73, s. 15; 2002, c. 45, s. 183.

16. *(Repealed).*

1966-67, c. 73, s. 16; 1979, c. 37, s. 43; 2002, c. 45, s. 183.

17. *(Repealed).*

1966-67, c. 73, s. 17; 1992, c. 61, s. 65; 2002, c. 45, s. 184; 2004, c. 37, s. 90; 2009, c. 58, s. 4.

18. *(Repealed).*

1966-67, c. 73, s. 18; 1983, c. 10, s. 3; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2009, c. 58, s. 4.

19. *(Repealed).*

1966-67, c. 73, s. 19; 2002, c. 45, s. 185.

20. *(Repealed).*

1966-67, c. 73, s. 20; 1966-67, c. 72, s. 23; 1968, c. 9, s. 90; 1975, c. 76, s. 11; 1981, c. 9, s. 24; 1982, c. 52, s. 52; 1983, c. 10, s. 4; 2002, c. 45, s. 186; 2004, c. 37, s. 90; 2018, c. 23, s. 351.

21. *(Repealed).*

1966-67, c. 73, s. 21; 1970, c. 17, s. 102; 2002, c. 45, s. 187.

22. *(Repealed).*

1966-67, c. 73, s. 22; 1966-67, c. 72, s. 23; 1975, c. 76, s. 11; 1981, c. 9, s. 24; 1982, c. 52, s. 52; 2002, c. 45, s. 187.

CHAPTER II

AUTHORIZATION OF THE AUTHORITY

2018, c. 23, s. 352.

DIVISION I

OBLIGATION TO BE AUTHORIZED

2018, c. 23, s. 352.

23. Except in the case of a bank listed in Schedule I or II to the Bank Act (S.C. 1991, c. 46), the Authority's authorization is required to carry on deposit institution activities in Québec.

1966-67, c. 73, s. 23; 2018, c. 23, s. 352.

24. Only the following legal persons may obtain the Authority's authorization:

(1) insurers authorized under the Insurers Act (chapter A-32.1) other than a self-regulatory organization, a reciprocal union or Lloyd's;

(2) financial services cooperatives within the meaning of the Act respecting financial services cooperatives (chapter C-67.3);

(3) trust companies authorized under the Trust Companies and Savings Companies Act (chapter S-29.02);

(4) business corporations regulated by Title III of the Trust Companies and Savings Companies Act that are not authorized, under that Act, to carry on the activities of a trust company;

(5) cooperatives established under the laws of a jurisdiction other than Québec and whose mission is similar to that of a financial services cooperative covered by an agreement under section 56.2;

(6) legal persons, other than cooperatives referred to in subparagraph 5, established under the laws of a jurisdiction other than Québec and that have the capacity to receive deposits of money from the public; and

(7) other legal persons constituted under an Act of Québec determined by regulation, except cooperatives within the meaning of the Cooperatives Act (chapter C-67.2).

To obtain the Authority's authorization, the legal persons referred to in subparagraphs 4 to 7 of the first paragraph must hold at least $5,000,000 in capital.

1966-67, c. 73, s. 24; 2018, c. 23, s. 352.

24.1. For the purposes of this Act,

"authorized deposit institution" means a legal person referred to in the first paragraph of section 24 that has obtained the Authority's authorization under section 23;

"authorized Québec deposit institution" means an authorized deposit institution constituted under an Act of Québec;

"Québec savings company" means a business corporation referred to in subparagraph 4 of the first paragraph of section 24 that has obtained the Authority's authorization.

2018, c. 23, s. 352.

25. *(Repealed).*

1966-67, c. 73, s. 25; 1968, c. 71, s. 2; 1988, c. 64, s. 551; 1999, c. 40, s. 27; 2009, c. 58, s. 4.

26. *(Repealed).*

1966-67, c. 73, s. 26; 1968, c. 71, s. 3; 1974, c. 70, s. 473; 1977, c. 5, s. 14; 2002, c. 45, s. 188; 2004, c. 37, s. 90; 2009, c. 58, s. 4.

DIVISION II

APPLICATION FOR AUTHORIZATION

2018, c. 23, s. 353.

27. A legal person that intends to carry on deposit institution activities, when such activities require the Authority's authorization, is responsible for filing an application with the Authority for its authorization.

An applicant must, in its application, show that it is able to comply with the applicable provisions of this Act.

It must also include the following information:

(1) its name, the name it intends to use in Québec if different, the address of its head office and, if the latter is not in Québec, the proposed address of its principal establishment in Québec, if any;

(2) if applicable, the conditions and restrictions it wishes to have attached to the authorization;

(3) a description of its financial structure;

(4) if applicable, the name and address of each holder of a significant interest in its decisions, as well as a description of that interest;

(5) if the applicant is not constituted under the laws of Québec, the name of the regulatory authority of its domicile (home regulator);

(6) if applicable, the name and address of the attorney designated under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1);

(7) if it belongs to a financial group, the name under which the group is known, if any, and, if applicable, the names of the other financial institutions that belong to the group; and

(8) the other information prescribed by regulation of the Authority.

1966-67, c. 73, s. 27; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2009, c. 58, s. 5; 2018, c. 23, s. 353.

27.1. The home regulator of a legal person is the competent authority with respect to the legal person's deposit institution activities, under the laws of the jurisdiction whose legislation governs the legal person's constituting act.

2018, c. 23, s. 353.

27.2. If the applicant is an authorized financial institution referred to in any of subparagraphs 1 to 3 of the first paragraph of section 24, only the following information is required:

(1) the information required under subparagraph 2 of the third paragraph of section 27;

(2) if applicable, the information required under subparagraph 6 of that paragraph; and

(3) the information required to update the other information contained in the register provided for in section 32.9.

2018, c. 23, s. 353.

27.3. The following must be filed with the application for authorization:

(1) a list of the applicant's directors and officers, including their names and domiciliary addresses;

(2) the résumé of each director and officer;

(3) a copy of the applicant's constituting act and by-laws or of any other document established for the same purpose;

(4) if applicable, a copy of the applicant's audited financial statements for its most recent fiscal year ended and the financial statements it is required to file with its home regulator, to the extent and in the manner that may be determined by regulation of the Authority;

(5) the other documents prescribed by regulation of the Authority; and

(6) the fees and charges prescribed by government regulation.

2018, c. 23, s. 353.

27.4. If the applicant is an authorized financial institution referred to in any of subparagraphs 1 to 3 of the first paragraph of section 24, the only documents required are those referred to in paragraphs 3 and, if applicable, 5 and 6 of section 27.3.

2018, c. 23, s. 353.

DIVISION III

GRANTING OF AUTHORIZATION

2018, c. 23, s. 353.

28. The Authority shall grant its authorization to an applicant that meets the following conditions:

(1) the applicant has provided the information and documents required under this Act and has paid the fees and charges payable; and

(2) in the Authority's opinion,

(a) the applicant has shown that it is able to comply with the applicable provisions of this Act,

(b) there are no serious reasons to believe that a holder of a significant interest in the applicant's decisions is likely to interfere with the applicant's adherence to sound commercial practices or sound and prudent management practices, and

(c) the applicant's name is not misleading.

1966-67, c. 73, s. 28; 1987, c. 95, s. 370; 2009, c. 58, s. 6; 2018, c. 23, s. 353.

28.1. The Authority may, in granting its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

The Authority may also, in granting its authorization, attach the conditions and restrictions it considers necessary for that purpose.

2018, c. 23, s. 353.

28.2. The authorization granted by the Authority entails, for the authorized deposit institution, the obligation to maintain its existence until the final revocation of that authorization.

2018, c. 23, s. 353.

28.3. The Authority shall notify the applicant in writing of its decision.

Before refusing to grant its authorization or granting an authorization with conditions or restrictions attached, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the applicant in writing and grant the latter at least 10 days to submit observations, unless the conditions or restrictions are attached at the applicant's request.

2018, c. 23, s. 353.

CHAPTER III

SPECIAL POWERS OF AUTHORIZED DEPOSIT INSTITUTIONS

2018, c. 23, s. 353.

28.4. An authorized deposit institution may receive deposits of money from a minor or a person of full age who does not have legal capacity to contract, without anyone's authorization or intervention.

2018, c. 23, s. 353.

CHAPTER IV

NON-APPLICATION OF CERTAIN PROVISIONS FOR SOME AUTHORIZED FINANCIAL INSTITUTIONS

2018, c. 23, s. 353.

28.5. The provisions of Chapters V to IX, except the third paragraph of section 28.21, do not apply to an authorized financial institution that is an authorized insurer, a financial services cooperative or an authorized trust company.

2018, c. 23, s. 353.

CHAPTER V

APPLICATION OF CERTAIN PROVISIONS TO FINANCIAL GROUPS AND THIRD PERSONS ACTING ON BEHALF OF AN AUTHORIZED DEPOSIT INSTITUTION

2018, c. 23, s. 353; 2021, c. 34, s. 111.

28.6. The obligations of an authorized deposit institution under the provisions of this Act remain unchanged by the mere fact that the deposit institution entrusts a third person to carry on any part of an activity governed by those provisions.

2018, c. 23, s. 353.

28.7. An authorized deposit institution must ensure that any group in respect of which the deposit institution is the holder of control complies with the prohibitions imposed on the deposit institution by this Act.

A prohibition imposed on such an institution applies to the groups in respect of which it is the holder of control not only when each of them is acting alone, but also when the acts or omissions of all or some of them would have contravened that prohibition had they been done or made by only one of them.

This section does not prohibit a group in respect of which an authorized deposit institution is the holder of control from carrying on activities the group is permitted to carry on by the Act governing it even though the deposit institution is not permitted to carry on those activities, provided the group is a financial institution.

2018, c. 23, s. 353.

28.8. An authorized deposit institution is liable for failures to comply with this Act by a group in respect of which the deposit institution is the holder of control or by whoever is the holder of control of the group and performs an obligation of the deposit institution on the deposit institution's behalf, as if those failures to comply were the deposit institution's own.

2018, c. 23, s. 353.

28.9. The Authority's inspection functions and powers, provided for by the Act respecting the regulation of the financial sector (chapitre E-6.1), that may be exercised in relation to an authorized deposit institution extend to any affiliated group if the person authorized to inspect the deposit institution considers it necessary to inspect the group in order to complete the verification of the deposit institution's compliance with this Act, even though the group does not carry on activities governed by an Act referred to in section 7 of that Act.

2018, c. 23, s. 353.

28.10. The Authority may prohibit that an authorized deposit institution's obligations under this Act be performed by a third person on the deposit institution's behalf if, in the Authority's opinion, such performance would render the application of this Act difficult or ineffective.

Before rendering its decision, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the deposit institution in writing and grant the latter at least 15 days to submit observations.

2018, c. 23, s. 353.

CHAPTER VI

COMMERCIAL PRACTICES

2018, c. 23, s. 353.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 353.

28.11. An authorized deposit institution must adhere to sound commercial practices.

In carrying on its financial institution activities, such practices include providing fair treatment to its clientele, in particular by

(1) providing appropriate information;

(2) adopting a policy for processing complaints filed by members of that clientele and resolving disputes with them; and

(3) keeping a complaints register.

2018, c. 23, s. 353.

28.12. An authorized deposit institution must be able to show to the Authority that it adheres to sound commercial practices.

2018, c. 23, s. 353.

DIVISION II

COMPLAINT PROCESSING AND DISPUTE RESOLUTION POLICY AND EXAMINATION OF COMPLAINT RECORDS BY THE AUTHORITY

2018, c. 23, s. 353.

28.13. The complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 28.11 must, in particular,

(1) set out the characteristics that make a communication to the authorized deposit institution a complaint that must be registered in the complaints register kept under subparagraph 3 of the second paragraph of section 28.11; and

(2) provide for a record to be opened for each complaint and prescribe rules for keeping such records.

The authorized deposit institution must make a summary of the policy, including the elements specified in subparagraphs 1 and 2 of the first paragraph, publicly available on its website and disseminate it by any appropriate means to reach the clientele concerned.

2018, c. 23, s. 353.

28.14. Within 10 days after a complaint is registered in the complaints register, the authorized deposit institution must send the complainant a notice stating the complaint registration date and the complainant's right, under section 28.15, to have the complaint record examined.

2018, c. 23, s. 353.

28.15. A complainant whose complaint has been registered in the complaints register may, if dissatisfied with the deposit institution's processing of the complaint or the outcome, request the deposit institution to have the complaint record examined by the Authority.

The deposit institution is required to comply with the complainant's request and send the complaint record to the Authority.

2018, c. 23, s. 353.

28.16. The Authority shall examine the complaint records that are sent to it.

It may, with the parties' consent, act as conciliator or mediator or designate a person to act as such.

Conciliation or mediation may not, alone or in combination, continue for more than 60 days after the date of the first conciliation or mediation session, as the case may be, unless the parties consent to it.

Conciliation and mediation are free of charge.

2018, c. 23, s. 353.

28.17. Unless the parties agree otherwise, nothing that is said or written in the course of a conciliation or mediation session may be admitted into evidence before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

A conciliator or mediator may not be compelled to disclose anything revealed or learned in the exercise of conciliation or mediation functions or to produce a document prepared or obtained in the course of such functions before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no one has a right of access to a document contained in the conciliation or mediation record.

2018, c. 23, s. 353.

28.18. Despite sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Authority may not communicate a complaint record without the authorization of the authorized deposit institution that has sent it.

2018, c. 23, s. 353.

28.19. On the date set by the Authority, an authorized deposit institution shall send it a report on the complaint processing and dispute resolution policy adopted under subparagraph 2 of the second paragraph of section 28.11 stating the number of complaints that the deposit institution has registered in the complaints register and their nature.

The report must cover the period determined by the Authority.

2018, c. 23, s. 353.

DIVISION III

SPECIAL PROVISIONS RESPECTING BUSINESS BETWEEN FINANCIAL INSTITUTIONS

2018, c. 23, s. 353.

28.20. Except for the first paragraph of section 28.11, this chapter does not apply if the authorized deposit institution's client is a bank or another financial institution.

2018, c. 23, s. 353.

CHAPTER VII

PRUDENTIAL RULES

2018, c. 23, s. 353.

DIVISION I

MANAGEMENT PRACTICES

2018, c. 23, s. 353.

28.21. An authorized deposit institution must adhere to sound and prudent management practices ensuring, in particular, good governance and compliance with the laws governing its activities.

With respect to the deposit institution's financial management, such practices must, in particular, provide that the deposit institution maintain

(1) adequate assets to meet its liabilities, as and when they become due; and

(2) adequate capital to ensure its sustainability.

For the purpose of determining the assets to be maintained, demand deposits are considered payable when and to the extent considered usual in the economic conditions prevailing at the time.

2018, c. 23, s. 353.

28.22. An authorized deposit institution must be able to show to the Authority that it adheres to sound and prudent management practices.

2018, c. 23, s. 353.

28.23. An authorized deposit institution must hold a fidelity insurance policy for an amount considered sufficient by the Authority according to generally accepted practices and to the volume of the deposit institution's activities.

2018, c. 23, s. 353.

28.24. The Authority may, if it considers that an authorized deposit institution's capital is not adequate to ensure the deposit institution's sustainability, order the deposit institution to adopt a compliance program within the time it prescribes and for the reasons it specifies.

Before exercising the power provided for in the first paragraph, the Authority must notify the deposit institution of its intention and give it at least 10 days to submit observations.

The Authority may not order an authorized deposit institution other than an authorized Québec deposit institution to adopt such a program if it may hinder the measures taken by the deposit institution's home regulator.

2018, c. 23, s. 353.

28.25. The compliance program describes the measures that must be implemented by the authorized deposit institution within the time limits specified in it.

2018, c. 23, s. 353.

28.26. The compliance program adopted by the authorized deposit institution is submitted for approval to the Authority.

2018, c. 23, s. 353.

28.27. The authorized deposit institution is required to implement the compliance program approved by the Authority.

2018, c. 23, s. 353.

28.28. An authorized deposit institution that is required to implement a compliance program must provide the Authority with any report the Authority may require on the implementation of the program at such intervals, in such form and with such content as the Authority determines.

2018, c. 23, s. 353.

DIVISION II

INVESTMENTS

2018, c. 23, s. 353.

§ 1. — *Provisions applicable to all authorized deposit institutions*

2018, c. 23, s. 353.

28.29. An authorized deposit institution must adopt an investment policy approved by its board of directors.

The investment policy must, in particular,

(1) provide for the matching of the respective maturities of the deposit institution's investments with the deposit institution's liabilities;

(2) provide for the appropriate diversification of those investments; and

(3) include a description of the types of investments and other financial transactions that it authorizes and the limits applicable to them.

The deposit institution must send its investment policy to the Authority at the Authority's request.

2018, c. 23, s. 353.

28.30. An authorized deposit institution must follow the investment policy approved by its board of directors.

2018, c. 23, s. 353.

§ 2. — *Provisions applicable to authorized Québec deposit institutions*

2018, c. 23, s. 353.

I. — *Acquisition of participations and co-ownership*

2018, c. 23, s. 353.

28.31. No authorized Québec deposit institution may acquire or hold contributed capital securities issued by a legal person or a partnership or participations in a trust in excess of

(1) 30% of the value of those securities or participations; or

(2) the number of those securities or participations allowing it to exercise more than 30% of the voting rights.

Nor may an authorized Québec deposit institution be the co-owner of property if its share of the right of ownership is greater than 30% without exceeding 50%, alone or together with the shares of groups affiliated with it.

2018, c. 23, s. 353.

28.32. Despite section 28.31, an authorized Québec deposit institution may acquire and hold up to all the contributed capital securities issued by a legal person or a partnership, up to all the participations in a trust or a share of a right of ownership in cases where the deposit institution will be the holder of control of the person, partnership, trust or property after the acquisition and in the cases determined by government regulation.

2018, c. 23, s. 353.

II. — *Accessory guarantees for certain investments*

2018, c. 23, s. 353.

28.33. An authorized Québec deposit institution may become the owner or holder of property in contravention of section 28.31 only if it does so to obtain or preserve an accessory guarantee for one of its investments or for any other financial transaction.

2018, c. 23, s. 353.

III. — *Penalties*

2018, c. 23, s. 353.

28.34. If an authorized Québec deposit institution holds or owns property, as the case may be, in contravention of section 28.31, it must dispose of that property as soon as market conditions permit.

2018, c. 23, s. 353.

28.35. Directors of an authorized Québec deposit institution who agree to a contravention of section 28.31 are held solidarily liable for any resulting losses to the deposit institution.

A director cannot be held liable under the first paragraph if the director acted with a reasonable degree of prudence and diligence in the circumstances.

Furthermore, for the purposes of the first paragraph, the court may, after considering all the circumstances and on the terms the court considers appropriate, relieve a director, either wholly or partly, from the liability the director would otherwise incur if it appears to the court that the director has acted reasonably, honestly and loyally, and ought fairly to be excused.

2018, c. 23, s. 353.

CHAPTER VIII

GOVERNANCE

2018, c. 23, s. 353.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 353.

28.36. An authorized deposit institution must have a board of directors composed of at least seven members.

2018, c. 23, s. 353.

28.37. A director of an authorized deposit institution who resigns must declare his or her reasons to the deposit institution and to the Authority in writing.

2018, c. 23, s. 353.

28.38. The board of directors must ensure that the authorized deposit institution adheres to sound commercial practices and sound and prudent management practices.

To that end, it must entrust certain directors it designates or a committee of such directors with the responsibility of seeing that sound commercial practices and sound and prudent management practices are adhered to and situations contrary to such practices are detected.

Within three months after the closing date of the authorized deposit institution's fiscal year, the directors or the committee, as the case may be, shall report to the board of directors on the performance of the responsibility entrusted to them or it and, if applicable, on the other activities they or it carries on for the authorized deposit institution.

2018, c. 23, s. 353.

28.39. A director designated in accordance with section 28.38 or the committee provided for in that section, as the case may be, must, on becoming aware of a situation that is likely to appreciably deteriorate the authorized deposit institution's financial position, of another situation that is contrary to sound and prudent management practices or of a situation that is contrary to sound commercial practices, notify the board of directors in writing.

The board of directors must then see to it that the situation is promptly remedied.

2018, c. 23, s. 353.

28.40. The director who or committee that notified the board of directors in accordance with section 28.39 shall, on finding that the situation mentioned in the notice has not been corrected, send the Authority a copy of the notice given under that section.

A description of any relevant events that have occurred since the notice was drafted and any other information the director or committee considers relevant must be sent with the notice.

2018, c. 23, s. 353.

28.41. A director designated in accordance with section 28.38 or a director on the committee provided for in that section, as the case may be, who, in good faith, notifies the board of directors or the Authority in accordance with section 28.39 or 28.40 incurs no civil liability for doing so.

The same is true for any person who, in good faith, provides information or documents to one or more of those directors and for a director who makes a declaration under section 28.37.

2018, c. 23, s. 353.

DIVISION II

PROVISIONS SPECIFIC TO AUTHORIZED QUÉBEC DEPOSIT INSTITUTIONS

2018, c. 23, s. 353.

§ 1. — *Composition of board of directors*

2018, c. 23, s. 353.

28.42. More than half of the board of directors of an authorized Québec deposit institution must be composed of persons other than employees of that deposit institution or of a group of which it is the holder of control.

2018, c. 23, s. 353.

28.43. An authorized Québec deposit institution must implement a policy aimed at fostering, in particular, the independence, competence and diversity of the members of its board of directors and of the members of the committees of the board.

2018, c. 23, s. 353.

§ 2. — *Establishment and composition of audit committee and ethics committee*

2018, c. 23, s. 353.

28.44. The board of directors of an authorized Québec deposit institution must establish an audit committee and an ethics committee from among its members.

2018, c. 23, s. 353.

28.45. The audit committee and the ethics committee of an authorized Québec deposit institution must each be composed of at least three directors, a majority of whom are not

(1) officers or employees of the deposit institution;

(2) members of both the ethics committee and the audit committee;

(3) directors, officers or other mandataries or employees of a group of which the deposit institution is the holder of control; or

(4) holders of a significant interest in the deposit institution or in a business corporation affiliated with the deposit institution.

2018, c. 23, s. 353.

28.46. The Authority may, if an authorized Québec deposit institution shows that the exercise of the committee's functions will not be adversely affected, authorize

(1) the establishment of a committee whose composition does not comply with section 28.45; or

(2) the exercise by one of the committees mentioned in that section of the functions usually assigned to the other committee, in addition to its own functions.

The Authority may, in granting such an authorization, require any undertaking it considers necessary to ensure compliance with this Act.

2018, c. 23, s. 353.

§ 3. — *Functions of the audit committee*

2018, c. 23, s. 353.

28.47. The audit committee must examine all financial statements intended for the board of directors before they are submitted to the board.

The audit committee may be convened by one of its members or by the auditor. The auditor must be notified of every committee meeting and attend every meeting to which he or she is convened. The committee must provide the auditor an opportunity to be heard.

The committee must cause any error or misstatement in financial statements to be corrected and, if the financial statements were sent to the members, inform the meeting of the members accordingly.

2018, c. 23, s. 353.

§ 4. — *Functions of the ethics committee*

2018, c. 23, s. 353.

28.48. An authorized Québec deposit institution must have rules of ethics; they must be adopted by its ethics committee and be sent to the Authority.

Those rules must pertain to such subjects as

(1) the conduct of the deposit institution's directors and officers;

(2) the conduct of the deposit institution with natural persons or groups that are restricted parties with respect to it; and

(3) the formalities and conditions governing contracts with such persons or groups.

2018, c. 23, s. 353.

28.49. An authorized Québec deposit institution must follow the rules of ethics adopted by its ethics committee; they are binding on its board of directors.

2018, c. 23, s. 353.

28.50. The ethics committee of an authorized Québec deposit institution must see that the rules of ethics are complied with and notify the board of directors, in writing and without delay, of any violation of those rules.

2018, c. 23, s. 353.

28.51. Each year, the ethics committee of an authorized Québec deposit institution shall send the Authority, within two months after the closing date of the deposit institution's fiscal year, a report on the committee's activities in that fiscal year.

The report must include or describe

(1) the committee members' names and addresses;

(2) any change among the committee members;

(3) the list of conflict of interest situations and contracts with natural persons or groups that are restricted parties with respect to the deposit institution which have come to the committee's notice;

(4) the measures taken to see that the rules of ethics are complied with; and

(5) violations of the rules of ethics.

2018, c. 23, s. 353.

28.52. An authorized Québec deposit institution must, when doing business with natural persons or groups that are restricted parties with respect to it, act in the same manner as it would when dealing at arm's length.

Consequently, a contract entered into between the deposit institution and a natural person or group that is a restricted party with respect to it may not be less advantageous for the deposit institution than if it had been entered into at arm's length.

2018, c. 23, s. 353.

28.53. Section 28.52 does not apply to the remuneration of directors or any other matter connected with a contract of employment.

2018, c. 23, s. 353.

28.54. The following natural persons and groups are restricted parties with respect to an authorized Québec deposit institution:

(1) the deposit institution's directors and officers;

(2) the directors and officers of the group that is the holder of control of the deposit institution;

(3) if the deposit institution is a Québec savings company, the holder of a significant interest in the company;

(4) natural persons and groups having economic ties with the persons described in subparagraphs 1 to 3, except a group of which the deposit institution is the holder of control;

(5) a group whose board of directors is composed, in the majority, of members of the deposit institution's board of directors; and

(6) any other person or group designated under section 28.56.

An authorized financial institution is not a group that is a restricted party with respect to a deposit institution if the financial institution is the holder of exclusive control of the deposit institution, or if it is the holder of control of the deposit institution and both the authorized financial institution and the deposit institution have the same holder of exclusive control.

2018, c. 23, s. 353.

28.55. For the purposes of section 28.54, the holder of control of a business corporation has exclusive control of the corporation if that holder alone can choose all the directors and exercise the voting rights attached to all the shares issued by the corporation, provided that, if applicable, the holder holds all the securities that are convertible into such shares carrying voting rights and all the rights to acquire such shares.

2018, c. 23, s. 353.

28.56. The Authority may designate a natural person or a group as a restricted party if, in its opinion, that person or group is likely to receive preferential treatment to the detriment of the authorized Québec deposit institution.

The Authority may review a designation at the request of the person or group designated or the deposit institution concerned.

Before making or refusing to review a designation, the Authority must give the natural person or group and the deposit institution concerned an opportunity to submit observations.

The Authority shall notify the person or group designated and the deposit institution concerned of its decision on the designation or the review request, as applicable.

2018, c. 23, s. 353.

28.57. Unless the obligations of an authorized Québec deposit institution under the following contracts are minimal, such contracts must be submitted to its board of directors for approval:

(1) a contract for the acquisition, by the deposit institution, of securities issued by a natural person or group that is a restricted party with respect to the deposit institution or for the transfer of assets between them; and

(2) a service contract between the deposit institution and a natural person or group that is a restricted party with respect to the deposit institution.

Before approving such contracts, the board of directors shall obtain the opinion of the ethics committee.

2018, c. 23, s. 353.

28.58. Except to the extent authorized by its rules of ethics, no authorized Québec deposit institution may extend credit to its directors or officers, to natural persons or groups having economic ties with them or to the directors or officers of a legal person affiliated with the deposit institution.

2018, c. 23, s. 353.

CHAPTER IX

AUDITOR

2018, c. 23, s. 353.

DIVISION I

QUALIFICATIONS AND BEGINNING AND END OF TERM

2018, c. 23, s. 353.

28.59. An auditor must be charged with auditing an authorized deposit institution's books and accounts.

2018, c. 23, s. 353.

28.60. An auditor charged with the audit provided for in section 28.59 must be a member of the Ordre professionnel des comptables professionnels agréés du Québec and hold a public accountancy permit.

However, in the case of an authorized deposit institution, other than an authorized Québec deposit institution, that carries on its activities in Québec and elsewhere in Canada, the auditor is not required to be a member of that order or to hold that permit if he or she holds an authorization of the same nature issued elsewhere in Canada.

2018, c. 23, s. 353.

28.61. The auditor charged with the audit provided for in section 28.59 is the auditor elected, appointed or otherwise determined by the authorized deposit institution in accordance with the Act under which it is constituted. If the auditor does not meet the conditions set out in section 28.60, another auditor must be charged with those functions.

2018, c. 23, s. 353.

28.62. The term of an auditor ends on the appointment of his or her successor, unless it ends as a result of his or her death, resignation, dismissal or bankruptcy or tutorship to a person of full age being instituted or a protection mandate homologated for him or her or if he or she no longer has the qualifications required under this division.

2018, c. 23, s. 353; 2020, c. 11, s. 195.

28.63. The authorized deposit institution must, within 10 days after the auditor's term has ended, notify the Authority of the fact.

2018, c. 23, s. 353.

28.64. If an authorized deposit institution fails to charge an auditor with the audit provided for in section 28.59 within the time specified by the Authority, the Authority may appoint one and determine the remuneration that the deposit institution must pay him or her.

2018, c. 23, s. 353.

28.65. An authorized deposit institution must, before dismissing an auditor, give him or her at least 10 days' prior notice in writing and send a copy of the notice to the Authority, unless the latter authorizes it to proceed earlier.

The prior notice must give the reasons for the dismissal.

2018, c. 23, s. 353.

28.66. An auditor who resigns or who believes he or she was dismissed for reasons connected with his or her functions or with the conduct of the authorized deposit institution's business or the business of a member of its financial group must declare those reasons to the Authority in writing.

The auditor must send a copy of the declaration to the deposit institution's secretary.

The auditor must send those documents within 10 days after tendering his or her letter of resignation or learning of his or her dismissal, as the case may be.

2018, c. 23, s. 353.

28.67. Before accepting the office of auditor provided for by this chapter, a person must ask the authorized deposit institution's secretary whether the former auditor made the declaration required under section 28.66.

The secretary must provide the person with a copy of the declaration, if applicable.

2018, c. 23, s. 353.

DIVISION II

DUTIES AND POWERS

2018, c. 23, s. 353.

28.68. An authorized deposit institution is required to see that its directors, officers and employees send the auditor the information or documents regarding the deposit institution, the groups of which it is the holder of control and any other group whose financial information is consolidated with its own that the auditor requests in the course of his or her functions.

The deposit institution is also required to see that persons having custody of such documents do so as well.

2018, c. 23, s. 353.

28.69. An auditor who becomes aware of a situation that is likely to appreciably limit the authorized deposit institution's ability to fulfill its obligations must report on the situation in the ordinary course of his or her audit.

The same is true for an auditor who believes that a refusal or failure to provide information or a document requested by him or her is hindering the exercise of his or her functions.

The auditor must send the report to the board of directors. If applicable, he or she must also send a copy of it to the attorney designated under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1). The board of directors must then see to it that the situation is remedied.

2018, c. 23, s. 353.

28.70. If an auditor becomes aware or is informed of an error or misstatement in financial statements that he or she has audited, and if in his or her opinion the error or misstatement is material, the auditor must inform the board of directors.

On receiving the auditor's report, the board of directors must send a copy of it to the shareholders or other members within 15 days.

2018, c. 23, s. 353.

28.71. If the auditor finds that the situation that justified the drafting of the report submitted under section 28.69 has not been corrected, he or she must send a copy of it to the Authority.

A description of any relevant events that have occurred since the report was drafted and any other information the auditor considers relevant must be sent with the report.

2018, c. 23, s. 353.

28.72. An auditor who, in good faith, makes a declaration under section 28.66, submits a report under section 28.69 or sends a copy of the latter to the Authority under section 28.71 incurs no civil liability for doing so. The same is true for a person who, in good faith, provides information or documents under section 28.68.

2018, c. 23, s. 353.

DIVISION III

CONTINUATION OR BROADENING OF AN AUDIT, SPECIAL AUDIT AND OTHER MEASURES

2018, c. 23, s. 353.

28.73. If it considers it necessary, the Authority may order that the annual audit of an authorized deposit institution's books and accounts be continued, that its scope be broadened or that a special audit be conducted.

The expenses incurred in such a case are payable by the deposit institution after approval by the Authority.

2018, c. 23, s. 353.

28.74. If the Authority is of the opinion that an asset considered in the financial statements sent to it by an authorized deposit institution is overvalued, it may either require the deposit institution to cause an appraiser the choice of whom is approved by it to appraise that asset or appraise that asset itself. If the asset is a loan the repayment of which is guaranteed by property, the property is appraised.

If the results of the appraisal justify it, the Authority may require the deposit institution to modify its books and accounts as well as the financial statements referred to in the first paragraph to reflect the market value of the asset or, in the case of a loan, the value of the realization of the property guaranteeing the repayment. If a loan or another asset is that of a group of which the deposit institution is the holder of control, the Authority may, for those same purposes, require that the value of the deposit institution's investment in the group be modified. The Authority shall notify the auditor described in section 28.61 of the modification requested.

2018, c. 23, s. 353.

28.75. Before exercising a power conferred on it by section 28.74, the Authority must give the authorized deposit institution at least 10 days to submit observations.

2018, c. 23, s. 353.

28.76. The cost of the appraisal of an overvalued asset further to a decision of the Authority under section 28.74 is to be borne by the authorized deposit institution concerned, unless the Authority decides otherwise.

2018, c. 23, s. 353.

28.77. Semi-annually, on the dates determined by the Authority, an authorized deposit institution shall send the latter statements showing the changes in its investments and loans during the preceding half year.

The statements must be certified by two of the deposit institution's directors; they must be presented on the forms provided by the Authority.

2018, c. 23, s. 353.

28.78. An authorized deposit institution must send the Authority, according to the content and form and at the time or intervals the latter determines, the documents the latter considers useful to determine whether the deposit institution is complying with this Act.

2018, c. 23, s. 353.

28.79. The Authority may require an authorized deposit institution, the holder of control of the authorized deposit institution or a member of the authorized deposit institution's financial group to provide the documents or information the Authority considers useful for the purposes of this Act or that it or he or she otherwise provide access to those documents and information.

The Authority may likewise require the auditor of an authorized deposit institution to provide the documents or information he or she holds regarding the deposit institution.

The person to whom such a request is made is required to reply by not later than the date determined by the Authority.

2018, c. 23, s. 353.

28.80. An authorized deposit institution must notify the Authority of the name and address of whoever has become or intends to become the holder of its control within 10 days from the time it becomes aware of either situation.

If the authorized deposit institution is a business corporation, it must also, within the same time, send such a notice to the Authority regarding whoever has become or intends to become the holder of a significant interest in its decisions.

The deposit institution must, within the same time, notify the Authority whenever the holder of control or of a significant interest ceases to be so.

2018, c. 23, s. 353.

CHAPTER X

REVIEW OF AN AUTHORIZATION

2018, c. 23, s. 353.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 353.

28.81. The Authority shall, on its own initiative, on the deposit institution's application in the cases provided for in Division III or when it is informed of certain operations described in Division IV, review the authorization it has granted to an authorized deposit institution.

2018, c. 23, s. 353.

28.82. After reviewing an authorization, the Authority may maintain it as is, attach certain conditions or restrictions to it, withdraw existing conditions or restrictions, or revoke or suspend it.

2018, c. 23, s. 353.

DIVISION II

REVIEW ON THE AUTHORITY'S INITIATIVE

2018, c. 23, s. 353.

28.83. The Authority may, on its own initiative, review an authorization it has granted whenever it considers it necessary to do so in order to ensure compliance with this Act.

Unless the authorization is maintained as is, the Authority shall, in accordance with Chapter XI, revoke or suspend it or attach conditions or restrictions to it.

2018, c. 23, s. 353.

DIVISION III

REVIEW ON AN AUTHORIZED DEPOSIT INSTITUTION'S APPLICATION

2018, c. 23, s. 353.

28.84. The Authority is required to review the authorization it has granted to a deposit institution if the latter applies for such a review to have an attached condition or restriction withdrawn.

2018, c. 23, s. 353.

28.85. The application for review must specify the condition or restriction the deposit institution wishes to have withdrawn and the reasons for the withdrawal.

The application must also include any other information prescribed by regulation of the Authority. The costs and fees prescribed by government regulation must be filed with the application.

2018, c. 23, s. 353.

28.86. On receipt of the application and the required information, costs and fees, the Authority shall review the authorization to determine whether or not it may grant the application.

The Authority may, in withdrawing a condition or restriction, require any undertaking it considers necessary to ensure compliance with this Act.

When the Authority rules on an application for review filed by an authorized deposit institution, it shall send the deposit institution a document justifying its decision.

2018, c. 23, s. 353.

DIVISION IV

REVIEW IN LIGHT OF CERTAIN OPERATIONS

2018, c. 23, s. 353.

29. The Authority is required to review an authorization on being notified of any of the following operations:

(1) the amalgamation of the authorized deposit institution with another legal person;

(2) a change as to the authorized deposit institution's home regulator, in particular as a result of a continuance or another operation of the same nature;

(3) an operation not referred to in subparagraph 1 or 2 where the authorized deposit institution changes its juridical form or transmits its patrimony or part of it due to its division;

(4) a change of name of the authorized deposit institution; and

(5) in the case of an authorized Québec deposit institution, where the following operations have a significant effect on it:

(a) an acquisition of assets by the deposit institution or by a group of which it is the holder of control,

(b) the transfer of any part of the deposit institution's assets or of the assets of such a group, or

(c) its becoming the holder of control of a group in accordance with subparagraph 1 of the first paragraph of section 1.5.

An authorized Québec deposit institution's ceasing to be the holder of control of a group is deemed to be a transfer, by the group, of all its assets.

1966-67, c. 73, s. 29; 2018, c. 23, s. 353; 2024, c. 15, s. 81.

30. For the purposes of subparagraph 5 of the first paragraph of section 29 and section 41.2.1, a deposit institution's becoming the holder of control of a group or an acquisition or transfer of assets is deemed to not have a significant effect on the deposit institution if the variation that the operation entails in the value of its assets does not exceed 5%.

The variation in the value of the deposit institution's assets is established in relation to the value of those assets at the end of the fiscal year preceding any of the operations referred to in the first paragraph.

1966-67, c. 73, s. 30; 1983, c. 10, s. 5; 2018, c. 23, s. 353; 2024, c. 15, s. 82.

30.1. An authorized deposit institution must inform the Authority of its intention to carry out one or more operations giving rise to a review not later than the 30th day before the operation or, in the case of more than one operation, before the first operation, by filing a notice with the Authority in the form determined by the Authority.

The costs and fees prescribed by government regulation must be filed with the notice.

However, the authorized deposit institution is not required to inform the Authority if it is also an authorized insurer or an authorized trust company and has filed a notice of the same nature, in accordance with section 148 of the Insurers Act (chapter A-32.1) or with section 128 of the Trust Companies and Savings Companies Act (chapter S-29.02).

2018, c. 23, s. 353.

30.2. A notice of intention to amalgamate must include

(1) the name and address of each of the legal persons proposing to amalgamate;

(2) the proposed name of the legal person resulting from the amalgamation;

(3) the juridical form of the legal person resulting from the amalgamation;

(4) the location of the proposed head office of the legal person resulting from the amalgamation; and

(5) any other information required by the Authority.

A document including the same information as that required to be included in an initial application for authorization and the documents that must be filed with such an application must be filed with the notice of intention to amalgamate for the legal person resulting from the amalgamation.

In the case of an amalgamation involving more than one authorized deposit institution, a joint notice may be filed.

2018, c. 23, s. 353.

30.3. A notice of intention to change the authorized deposit institution's home regulator must include

(1) a description of the operation from which the change results;

(2) the deposit institution's name and address;

(3) the title of and exact reference to the Act of the jurisdiction of the home regulator that will govern the deposit institution's deposit institution activities following the change and the title of and exact reference to the Act of the jurisdiction that will govern the deposit institution's affairs, if different;

(4) the location of the deposit institution's proposed head office following the change, if different from that of its head office at the time the notice is sent; and

(5) any other information required by the Authority.

2018, c. 23, s. 353.

30.4. A notice of intention to carry out an operation described in subparagraph 3 of the first paragraph of section 29 must include

(1) a description of the proposed operation;

(2) if applicable, the authorized deposit institution's new juridical form following the operation as well as the title of and exact reference to the Act that will govern its affairs;

(3) if applicable, the names and addresses of all the groups, other than the authorized deposit institution, involved in the operation;

(4) the location of the authorized deposit institution's proposed head office following the operation, if different from that of its head office at the time the notice is sent; and

(5) any other information required by the Authority.

A document including the same information as that required to be included in an initial application for authorization and, if required by the Authority, the documents that must be filed with such an application,

must be filed with the notice of intention for each legal person resulting from the operation that will carry on deposit institution activities in Québec.

2018, c. 23, s. 353.

30.5. A notice of intention to change names must include the name and address of the authorized deposit institution, in addition to its proposed name.

2018, c. 23, s. 353.

30.6. A notice of intention to carry out an operation referred to in subparagraph 5 of the first paragraph of section 29 must include

(1) a description of the proposed acquisition or transfer, in particular, a description of the assets to be acquired or transferred by the deposit institution or the group of which it is the holder of control;

(2) the names and addresses of the parties to the acquisition or transfer; and

(3) any other information required by the Authority.

2018, c. 23, s. 353; 2024, c. 15, s. 83.

30.7. On receipt of a notice referred to in the first paragraph of section 30.1 or, if the Authority receives it before the expiry of the period specified in that section, not later than 30 days before an operation provided for in that paragraph, the Authority shall publish the notice in its bulletin and review the authorization it has granted to the deposit institution to determine whether it can be maintained.

The Authority may, to maintain its authorization, require any undertaking it considers necessary to ensure compliance with this Act.

A notice of intention to carry out an operation referred to in subparagraph 5 of the first paragraph of section 29 is not published.

2018, c. 23, s. 353; 2021, c. 34, s. 112; 2024, c. 15, s. 84.

30.8. Unless the Authority considers that it must revoke or suspend a deposit institution's authorization, that authorization becomes the authorization of the deposit institution resulting from the operation, with any conditions and restrictions the Authority may attach to it.

2018, c. 23, s. 353.

30.9. The sending of a notice by an authorized deposit institution in accordance with this chapter does not relieve the deposit institution of its obligation to file an application for revocation if the operation giving rise to a review involves the voluntary revocation of an authorization, nor does it relieve the deposit institution of its obligation to file an application for authorization if the operation involves the carrying on of an activity requiring the Authority's authorization, when the deposit institution does not have it.

2018, c. 23, s. 353.

30.10. The granting of the Authority's authorization is governed by Chapter II; the revocation or suspension of, and the attachment of conditions or restrictions to, the authorization are governed by Chapter XI.

2018, c. 23, s. 353.

CHAPTER XI

REVOCATION AND SUSPENSION OF, AND CONDITIONS OR RESTRICTIONS THAT MAY BE ATTACHED TO, AN AUTHORIZATION

2018, c. 23, s. 353.

DIVISION I

GENERAL PROVISIONS

2018, c. 23, s. 353.

30.11. The authorization granted by the Authority to a deposit institution is revoked by operation of law, by the Authority acting on its own initiative or on an application by the authorized deposit institution.

Revocation is said to be voluntary if it is ordered by the Authority on an application by a deposit institution; it is said to be forced in all other cases.

The Authority may also, where provided for by law, suspend an authorization or attach the conditions and restrictions it considers necessary to ensure compliance with this Act.

2018, c. 23, s. 353.

30.12. The revocation of an authorization becomes final when the deposit institution concerned ceases to owe the deposits received in carrying on deposit institution activities.

2018, c. 23, s. 353.

30.13. A deposit institution continues to be an authorized deposit institution as long as a revocation is not final. However, it may not solicit or receive deposits of money from the public, except to honour a right conferred on a depositor under a contract in force on that date.

Suspension produces the same effects for its duration.

2018, c. 23, s. 353.

DIVISION II

FORCED REVOCATION, SUSPENSION AND CONDITIONS OR RESTRICTIONS

2018, c. 23, s. 353.

30.14. The authorization granted by the Authority to a deposit institution is revoked by operation of law if

(1) the deposit institution is dissolved or liquidated or wound up due to any external cause; or

(2) the authorization, if any, granted to it by the Authority to carry on activities as an insurer or trust company, is subject to forced revocation.

The deposit institution shall notify the Authority, without delay, of a fact referred to in subparagraph 1 of the first paragraph.

2018, c. 23, s. 353.

31. The Authority may, if it considers that it is in the public interest, revoke or suspend the authorization it has granted to an authorized deposit institution if,

(1) in its opinion,

(a) the deposit institution is failing to comply or is about to fail to comply with its obligations under an Act administered by the Authority,

(b) the deposit institution has failed, without valid reasons, to repay a deposit of money at maturity or to pay interest on a deposit when due, or

(c) there are serious reasons to believe that the holder of control of the deposit institution or of another significant interest in the deposit institution's decisions is likely to interfere with the deposit institution's adherence to sound commercial practices or sound and prudent management practices;

(2) the deposit institution has not carried on deposit institution activities in Québec for at least three years;

(3) the Authority is informed by a competent authority that the deposit institution has failed to comply with an Act that is not administered by the Authority and is of the opinion that the failure is contrary to sound and prudent management practices; or

(4) the deposit institution fails to adopt or implement a compliance program or to provide the Authority with any report the latter requires on the implementation of such a program.

1966-67, c. 73, s. 31; 1983, c. 10, s. 10; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2018, c. 23, s. 353.

31.1. In the cases described in section 31, instead of revoking or suspending the authorization granted to the authorized deposit institution and in order to allow the institution to remedy the situation, the Authority may attach such conditions or restrictions to the authorization as it considers necessary to ensure compliance with this Act.

1983, c. 10, s. 10; 1987, c. 95, s. 371; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2018, c. 23, s. 353.

31.2. Before ordering the forced revocation or the suspension of an authorization or attaching a condition or restriction to it, the Authority shall notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the authorized deposit institution in writing and grant the latter at least 10 days to submit observations.

1983, c. 10, s. 10; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2018, c. 23, s. 353.

31.3. A decision under section 31 or 31.1 may, within 30 days of its notification, be contested before the Financial Markets Administrative Tribunal.

The Tribunal may only confirm or quash a contested decision.

1983, c. 10, s. 10; 2009, c. 58, s. 7; 2018, c. 23, s. 353.

31.4. *(Repealed).*

1983, c. 10, s. 10; 1987, c. 95, s. 372; 1999, c. 40, s. 27; 2002, c. 45, s. 189; 2004, c. 37, s. 90; 2009, c. 58, s. 8; 2018, c. 23, s. 353.

32. A deposit institution whose authorization has been suspended or revoked or whose policy contemplated in section 34 has been suspended, cancelled or rescinded, as the case may be, must disclose that fact to its depositors and remove any sign, mark, advertisement or other means of publicity conveying the information that deposits entrusted to it are guaranteed under the terms of this Act.

1966-67, c. 73, s. 32; 1983, c. 10, s. 11; 2018, c. 23, s. 354.

32.1. The Authority shall publish in its bulletin a notice of any suspension or revocation of an authorization granted to a deposit institution on the expiry of the time within which the latter was entitled, under section 31.3, to contest the suspension or revocation. The Authority shall publish the notice without delay in the case of a revocation by operation of law.

1983, c. 10, s. 11; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2009, c. 58, s. 9; 2018, c. 23, s. 355.

DIVISION III

VOLUNTARY REVOCATION

2018, c. 23, s. 356.

32.2. The Authority may not revoke the authorization of an authorized deposit institution that applies for its revocation and that, at the time of the application, owes deposits of money received in carrying on deposit institution activities, unless the deposit institution

(1) will continue to owe those deposits; or

(2) has made the necessary arrangements to have at least one other authorized financial institution or a bank succeed it and owe those deposits as of the date on which it plans to cease to owe them.

2018, c. 23, s. 356.

32.3. The voluntary revocation of an authorization requires the filing of an application with the Authority for that purpose.

In addition, a written notice concerning the application, the documents prescribed by regulation of the Authority and the costs and fees prescribed by government regulation must be filed with the application.

2018, c. 23, s. 356.

32.4. An application for revocation must describe any arrangements made to have an authorized financial institution or a bank succeed the applicant.

The application must include any other information determined by regulation of the Authority.

2018, c. 23, s. 356.

32.5. A notice concerning an application for revocation must state the date on which the authorized deposit institution intends to cease its deposit institution activities, and the names and addresses of the authorized financial institutions or banks that will succeed it, if applicable.

2018, c. 23, s. 356.

32.6. The Authority shall publish a notice concerning an application for revocation in its bulletin.

If an authorized financial institution or a bank is to succeed the authorized deposit institution, the latter must send the published notice to each of its depositors.

2018, c. 23, s. 356.

32.7. The Authority shall grant an application for revocation only if the authorized deposit institution shows that

(1) it no longer owes deposits of money received in carrying on deposit institution activities;

(2) it can continue to owe such deposits, without soliciting or receiving new ones, until their maturity date, in compliance with the provisions of this Act; or

(3) the arrangements made to have an authorized financial institution or a bank succeed the applicant are adequate and ensure the protection of depositors, and that it has sent the latter the notice of application required under the second paragraph of section 32.6.

2018, c. 23, s. 356.

32.8. The Authority shall send the deposit institution a document attesting its decision and publish the document in its bulletin.

2018, c. 23, s. 356.

CHAPTER XII

REGISTER OF AUTHORIZED DEPOSIT INSTITUTIONS

2018, c. 23, s. 356.

32.9. The Authority shall establish and keep up to date a register of authorized deposit institutions that contains the following information for each of them:

(1) its name, the name it uses in Québec if different, the address of its head office and, if its head office is not in Québec, the address of its principal establishment in Québec;

(2) if applicable, the name and address of its attorney designated under section 26 of the Act respecting the legal publicity of enterprises (chapter P-44.1);

(3) the restrictions, if any, attached to the authorization granted by the Authority;

(4) the name and address of the auditor designated under section 28.61;

(5) the name of the financial group it belongs to or, if the group does not have a name, the names of the financial institutions that are members of it; and

(6) any other information considered by the Authority to be useful to the public.

The information contained in the register of authorized deposit institutions is public information; it may be set up against third persons as of the date it is entered and is proof of its contents for the benefit of third persons in good faith.

2018, c. 23, s. 356.

32.10. An authorized deposit institution must declare to the Authority any change required to be made to the information concerning itself that is contained in the register, unless the Authority was otherwise informed by a notice or other document sent in accordance with this Act.

The declaration must be filed within 30 days of the date of the event giving rise to the change.

2018, c. 23, s. 356.

CHAPTER XIII

CONFIDENTIALITY OF SUPERVISORY INFORMATION

2018, c. 23, s. 356.

32.11. Such information as is determined by the Minister by regulation that is held by an authorized deposit institution in relation to the Authority's supervision of the authorized deposit institution is confidential. It may not be used as evidence in any civil or administrative proceedings and is privileged for that purpose.

No one may be compelled, in any civil or administrative proceedings, to testify or to produce a document relating to that information.

2018, c. 23, s. 356.

32.12. Despite section 32.11,

(1) the Attorney General, the Minister or the Authority may use the information made confidential by that section as evidence;

(2) the authorized deposit institution concerned may, in accordance with the regulation made by the Minister, use that information as evidence in any proceedings concerning the administration or enforcement of this Act or, in the case of a Québec savings company, the Business Corporations Act (chapter S-31.1), that are brought by the deposit institution concerned, the Minister, the Authority or the Attorney General; and

(3) anyone who may be compelled to testify or to produce a document relating to that information in any proceedings regarding the application of this Act or any other Act administered by the Authority to an authorized deposit institution or of the Business Corporations Act may use that information provided the proceedings are brought by the deposit institution concerned, the Attorney General, the Minister or the Authority.

2018, c. 23, s. 356; 2021, c. 34, s. 113.

32.13. The communication of information referred to in this chapter otherwise than in the cases provided for by its provisions does not entail a waiver of the confidentiality conferred by those provisions.

Likewise, the communication to the Authority of information protected by professional secrecy, by litigation privilege or by another communication restriction under the rules of evidence does not entail a waiver of the protection conferred on that information.

2018, c. 23, s. 356; 2021, c. 34, s. 114.

32.14. This chapter does not apply to information that must be made public by law. Nor does it apply to information held by an authorized deposit institution if the information is contained in a document that was sent in accordance with another Act.

2018, c. 23, s. 356.

TITLE III

PROTECTION OF DEPOSITS OF MONEY

2018, c. 23, s. 356.

CHAPTER I

GUARANTEE OF DEPOSITS OF MONEY

2018, c. 23, s. 356.

33. *(Repealed)*.

1966-67, c. 73, s. 33; 1968, c. 71, s. 4; 1983, c. 10, s. 12; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2007, c. 15, s. 16.

33.1. The Authority shall guarantee to every person who makes a deposit of money with an authorized deposit institution or a bank the payment, on their respective maturity dates, of the principal and interest of the deposit, up to $100,000.

Such guarantee shall not apply to deposits of money made outside Québec or to those payable only outside Québec.

The Minister may determine, for a period not exceeding two years, that the maximum amount of the guarantee under the first paragraph is to be greater than $100,000.

The Minister may also determine, for the same period, that deposits are to be 100% guaranteed.

The guarantee amount so determined by the Minister shall be substituted for the amount of $100,000 in sections 34, 34.4, 38.1, 39 and 57.

1983, c. 10, s. 13; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2007, c. 15, s. 17; 2009, c. 27, s. 9; 2009, c. 58, s. 10; 2018, c. 23, s. 357; 2021, c. 15, s. 91.

33.2. *(Repealed)*.

1983, c. 10, s. 13; 2007, c. 15, s. 18.

34. The Authority, for a premium and on such other conditions as are stipulated in a policy issued by it, may guarantee the payment, on their respective maturity dates, of the principal and interest, up to $100,000, of any deposit of money made outside Québec with an authorized deposit institution constituted under an Act of Québec, or with a bank if such bank is authorized for such purpose by the Governor General in Council.

Nevertheless, the suspension of the authorization of a deposit institution shall entail suspension of any policy issued to it under the preceding paragraph, and the cancellation thereof shall entail rescission of the policy.

1966-67, c. 73, s. 34; 1966-67, c. 74, s. 1; 1983, c. 10, s. 14; 1999, c. 40, s. 27; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2007, c. 15, s. 19; 2018, c. 23, s. 358.

34.1. The Authority shall execute its obligation under a guarantee if the authorized deposit institution is unable to make a payment covered by the guarantee when the payment becomes due because

(a) the deposit institution is under a court order;

(b) the deposit institution is in the process of voluntary or forced liquidation or winding-up or is being dissolved;

(c) (subparagraph replaced);

(d) (subparagraph replaced);

(e) (subparagraph replaced);

(f) (subparagraph repealed).

For the purposes of the first paragraph, the expression “deposit institution” includes a bank.

In the case of a financial services cooperative that is a member, within the meaning of the Act respecting financial services cooperatives (chapter C-67.3), of a security fund, the Authority’s obligation under a guarantee is enforceable only if the fund is exhausted.

1983, c. 10, s. 15; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2009, c. 58, s. 11; 2018, c. 23, s. 359.

34.2. *(Repealed).*

1983, c. 10, s. 15; 1987, c. 95, s. 373; 1999, c. 40, s. 27; 2002, c. 45, s. 190; 2004, c. 37, s. 90; 2009, c. 58, s. 12; 2018, c. 23, s. 360.

34.3. The Authority shall make payments in execution of its obligation under a guarantee within a reasonable time.

The Authority may execute its obligation under a guarantee by placing a deposit in any authorized deposit institution or in any bank at the disposal of the depositor.

In the case of a deposit of money in foreign currency, the Authority must calculate the deposit in Canadian dollars in accordance with the exchange rate published by the Bank of Canada on the date on which one of the cases referred to in the first paragraph of section 34.1 occurs or, if not published on that date, immediately before that date or, if the Bank does not publish an exchange rate, by the authorized deposit institution.

1983, c. 10, s. 15; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2018, c. 23, s. 361; 2024, c. 15, s. 117.

34.4. The Authority may, with the authorization of the Minister, if the deposit institution is being liquidated or wound-up within the meaning of the first paragraph of section 34.1, grant a depositor interest on the deposit of money, at a rate determined by regulation, for the period beginning on the date of liquidation or winding-up and ending on the date of the final payment in respect of the deposit of money. The total paid by the Authority must not exceed $100,000.

2009, c. 58, s. 13; 2018, c. 23, s. 362.

35. The Authority, when it pays a deposit of money in the place and stead of the authorized deposit institution, shall be subrogated *pleno jure* in all the rights of the depositor against the institution, up to the amount so paid.

The Authority’s claim against the authorized deposit institution bears interest from the payment to the depositor at a rate equal to the rate determined under section 28 of the Tax Administration Act (chapter A-6.002).

Where the depositor has been paid in part only by the Authority, he does not have, over the Authority, the preference provided in article 1658 of the Civil Code.

1966-67, c. 73, s. 35; 1983, c. 10, s. 16; 1999, c. 40, s. 27; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2009, c. 58, s. 14; 2010, c. 31, s. 175; 2018, c. 23, s. 363.

35.1. Where the Authority repays part of a guaranteed deposit of money, the Authority ranks equally with the depositor in respect of the amount so repaid and the interest accrued and payable under section 34.4.

2009, c. 58, s. 15.

36. Deposits of money owing by a deposit institution on the date the Authority's authorization is granted or on the date of issue of a policy contemplated in section 34 shall be deemed to have been made to an authorized deposit institution.

The same shall apply to deposits of money made to a deposit institution after the date of issue of a permit or policy contemplated in section 34 but before 1 July 1970.

1966-67, c. 73, s. 36; 1968, c. 71, s. 5; 2018, c. 23, s. 364.

37. Deposits of money owing by a deposit institution on the date of suspension or cancellation of the authorization granted by the Authority, or of the suspension, rescission or expiry of a policy issued in accordance with section 34, shall continue to be guaranteed under this Act or under such policy, as the case may be.

The deposit institutions in which such deposits continue to be so guaranteed shall remain, with respect to such deposits and until the day on which they continue to be so guaranteed, subject to the pertinent provisions of this Act, the regulations or the policy, as the case may be, save to the extent provided by the regulations.

1968, c. 71, s. 6; 1983, c. 10, s. 17; 2018, c. 23, s. 365.

38. When a person makes several deposits of money with the same deposit institution or bank, such deposits, for the purposes of this Act, shall be deemed a single deposit. Nevertheless, such deposits may be considered separate as may be prescribed by the regulations.

1966-67, c. 73, s. 37; 1968, c. 71, s. 7; 1983, c. 10, s. 19; 2018, c. 23, s. 366.

38.1. When two or more deposit institutions have amalgamated and a person had made deposits with more than one of them, a deposit owing to that person immediately before the amalgamation by one of the deposit institutions is deemed to be separate from any deposit owing to that person immediately before the amalgamation by any other of those deposit institutions, as well as from any deposit made by that person with the deposit institution resulting from the amalgamation after the date of amalgamation.

However, a deposit made by the person with the deposit institution resulting from the amalgamation after the date of amalgamation is guaranteed only to the extent that the aggregate of deposits of that person with the deposit institution, except the said deposit, is less than $100,000.

This section applies also in the case of the amalgamation of two or more banks.

1983, c. 10, s. 19; 1999, c. 40, s. 27; 2007, c. 15, s. 19; 2018, c. 23, s. 367.

38.2. Section 38.1 applies, with the necessary modifications, in the case of the acquisition, by an authorized deposit institution or by a bank, of the assets, together with the take-over of the liabilities, of an authorized deposit institution or a bank.

For the application of section 38.1, the deposit institutions or banks contemplated in the first paragraph are deemed to be deposit institutions that have amalgamated and the deposits made after the date of acquisition are deemed to be made with the deposit institution resulting from the amalgamation.

1983, c. 10, s. 19; 2018, c. 23, s. 368.

39. When several deposits are deemed a single deposit by virtue of section 38 and are guaranteed partly by the application of section 33.1 and partly by a policy contemplated in section 34, the total guarantee applicable to such deposits shall not exceed, in principal and interest, the sum of $100,000.

1968, c. 71, s. 8; 1983, c. 10, s. 20; 2007, c. 15, s. 19.

40. *(Repealed).*

1966-67, c. 73, s. 38; 1983, c. 10, s. 21; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2009, c. 58, s. 16; 2018, c. 23, s. 369.

40.0.1. *(Repealed).*

2009, c. 58, s. 17; 2018, c. 23, s. 369.

40.0.2. *(Repealed).*

2009, c. 58, s. 17; 2018, c. 23, s. 369.

40.0.3. *(Repealed).*

2009, c. 58, s. 17; 2018, c. 23, s. 369.

40.0.4. *(Repealed).*

2009, c. 58, s. 17; 2018, c. 23, s. 369.

40.0.5. *(Repealed).*

2009, c. 58, s. 17; 2018, c. 23, s. 369.

40.0.6. *(Repealed).*

2009, c. 58, s. 17; 2018, c. 23, s. 369.

40.0.7. *(Repealed).*

2009, c. 58, s. 17; 2018, c. 23, s. 369.

40.0.8. *(Repealed).*

2009, c. 58, s. 17; 2018, c. 23, s. 369.

40.0.9. *(Repealed).*

2009, c. 58, s. 17; I.N. 2016-01-01 (NCCP); 2018, c. 23, s. 369.

CHAPTER II

PREMIUM

2018, c. 23, s. 370.

40.1. In this division, the "accounting period for premiums" means the period from 1 May of every year to 30 April of the next year.

1981, c. 30, s. 1; 1983, c. 10, s. 22.

40.2. For the purposes of the guarantee provided for in section 33.1 and for each accounting period for premiums, the Authority shall fix and collect from each authorized deposit institution a premium to be paid by the latter.

1981, c. 30, s. 1; 1983, c. 10, s. 24; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2018, c. 23, s. 371.

40.2.1. For the purpose of calculating the premium payable, an authorized deposit institution must file the declaration of guaranteed deposits on the form prescribed by the Authority, after determining the actual sum of the deposits of money it holds.

Not in force

Despite the first paragraph, an authorized deposit institution may file its declaration of guaranteed deposits after estimating the deposits of money using a method determined by regulation of the Authority.

2009, c. 58, s. 18; 2018, c. 23, s. 372.

40.3. The amount of the premium is equal to the greater of the following amounts:

(a) a percentage, determined by regulation, of an amount equal to the total of such portion of each deposit as is guaranteed by the Authority under section 33.1 and which is on deposit with the authorized deposit institution on 30 April preceding the accounting period for premiums; or

(b) an amount determined by regulation.

A regulation made for the purpose of subparagraph *b* of the first paragraph may authorize the Authority to take into account, in determining the amount of the premium, the fact that a deposit institution is a member of a cooperative group referred to in Division II of Chapter III. Such an amount may then be applicable to all the members of the cooperative group, to a certain category of them or to the federation of which they are members.

1981, c. 30, s. 1; 1983, c. 10, s. 25; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2018, c. 23, s. 373; 2018, c. 23, s. 373.

40.3.1. *(Repealed).*

1982, c. 52, s. 53; 1999, c. 40, s. 27; 2000, c. 29, s. 619; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2009, c. 58, s. 19; 2018, c. 23, s. 374.

40.3.2. *(Repealed).*

1982, c. 52, s. 53; 1999, c. 40, s. 27; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2009, c. 58, s. 20.

40.3.3. *(Repealed).*

1982, c. 52, s. 53; 1999, c. 40, s. 27; 2000, c. 29, s. 620; 2009, c. 58, s. 20.

40.3.4. *(Repealed).*

1982, c. 52, s. 53; 2018, c. 23, s. 374.

40.4. The Authority may, with the authorization of the Government, not fix or collect a premium from an authorized deposit institution whose deposits of money received or payable by it in Québec are guaranteed or insured by a plan which, in the opinion of the Authority, is equivalent to the plan established by this Act.

1981, c. 30, s. 1; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2018, c. 23, s. 375.

CHAPTER III

MITIGATION OF RISKS AND LOSSES, AND RESOLUTION PROCESS

I.N. 2018-08-01; 2018, c. 23, s. 376.

DIVISION I

MITIGATION OF RISKS AND LOSSES

2018, c. 23, s. 376.

40.5. The Authority may, in particular, on the conditions it determines, for the purpose of reducing a risk to the Authority or averting or reducing a threatened loss to the Authority,

(1) make advances of money, with or without security, to an authorized deposit institution or guarantee payment of the debts of such an institution;

(2) acquire the assets of an authorized deposit institution;

(3) make a deposit or guarantee a deposit made with an authorized deposit institution;

(4) guarantee an authorized deposit institution against any loss it may incur following an amalgamation with an authorized deposit institution or following the acquisition of the assets together with the take-over of the liabilities of such an institution;

(5) with the authorization of the Minister, enter, with any body or agency which, in the opinion of the Authority, administers an equivalent scheme, into an agreement concerning a deposit institution whose deposits are guaranteed or insured partly by the Authority and partly by such a body or agency;

(6) constitute a legal person or a partnership under an Act of Québec to carry out the liquidation or winding-up of the assets acquired from an authorized deposit institution;

(7) acquire any security issued by an authorized deposit institution; and

(8) apply to the Superior Court for an order to force the sale or amalgamation of an authorized deposit institution.

The Authority may, in addition, act as liquidator of a deposit institution whose authorization has been revoked or act as receiver of an authorized deposit institution.

2018, c. 23, s. 376.

DIVISION II

RESOLUTION PROCESS

2018, c. 23, s. 376.

§ 1. — *Resolution planning and resolution board*

2018, c. 23, s. 376.

40.6. The Authority shall plan operations to resolve problems that could arise from the failure of authorized deposit institutions belonging to a cooperative group within the meaning of section 6.2 of the Act

respecting financial services cooperatives (chapter C-67.3) and implement them when their implementation is ordered.

2018, c. 23, s. 376.

40.7. The functions of a resolution board are to approve the plan established by the Authority, order the implementation and closure of the resolution operations, and authorize any resolution operation that was not provided for in the plan.

2018, c. 23, s. 376.

40.8. The resolution board is composed of the person appointed as Deputy Minister of Finance under section 6 of the Act respecting the Ministère des Finances (chapter M-24.01), the President and Chief Executive Officer of the Authority appointed under section 3.3 of the Act respecting the governance of state-owned enterprises (chapter G-1.02), who are both members of the board by virtue of office, and a third person appointed by the Minister and remunerated by the Authority according to the terms determined by the Government.

Sections 32 to 32.2 of the Act respecting the regulation of the financial sector (chapter E-6.1) apply to that third person.

The board shall adopt operating rules.

The Authority must provide the resolution board with the services and equipment the board requests from it, free of charge.

2018, c. 23, s. 376; 2021, c. 34, s. 115; 2022, c. 19, s. 200.

40.9. The objective of resolution operations is to ensure the sustainability of a cooperative group's deposit institution activities despite the group's failure and without recourse to public funds.

The Authority shall establish a resolution plan specifying, in particular, the operations it intends to implement in case of an institution's failure in order to achieve that objective. The operations may be those provided for under this subdivision or other measures that the Authority is authorized by law to take.

2018, c. 23, s. 376.

40.10. The resolution plan shall be submitted to the resolution board for approval. The same shall apply to any amendments that may be made to the plan.

The board may ask the Authority to update the plan; it may also request any information about the plan that it considers necessary from the Authority.

2018, c. 23, s. 376.

§ 2. — *Implementation of resolution operations*

2018, c. 23, s. 376.

40.11. The Authority shall notify the resolution board without delay if it considers that the failure of deposit institutions belonging to the cooperative group is likely to cause the failure of the other deposit institutions belonging to the group and that the powers conferred on it by the Act respecting financial services cooperatives (chapter C-67.3) are insufficient to remedy the situation.

2018, c. 23, s. 376.

40.12. The resolution board shall order the implementation of resolution operations if it deems it to be in the public interest.

2018, c. 23, s. 376.

40.13. The order of the resolution board is, in all respects, final and conclusive and may not be questioned or reviewed in any court. It must be recorded in writing and a copy of the writing must be sent to the Authority, which must publish it without delay in its bulletin.

2018, c. 23, s. 376.

§ 3. — *Impacts of the resolution board's order*

2018, c. 23, s. 376.

40.14. The resolution board's order designates the Authority as the receiver of all the legal persons belonging to the cooperative group, including the security fund within the meaning of section 487 of the Act respecting financial services cooperatives (chapter C-67.3), until the closure of the resolution operations.

The Authority is then vested with the powers provided for in paragraphs 1 to 9 of section 19.2 of the Act respecting the regulation of the financial sector (chapter E-6.1), and sections 19.3 to 19.5 and 19.9 of that Act apply to the receivership so established, except any reference to an order of the Superior Court.

The Authority may not, under paragraph 4 of section 19.2 of that Act, terminate or cancel a financial contract covered by a regulation made under section 40.22.

2018, c. 23, s. 376; 2019, c. 2, s. 1.

40.15. Unless otherwise provided in this Act, no civil, administrative or arbitration proceedings may be brought against the legal persons belonging to the cooperative group during the resolution operations. The same shall apply to measures to be taken prior to the exercise of a right or power against those legal persons.

During the resolution process, the following are suspended by operation of law:

(1) the measures to be taken by a creditor prior to the exercise of a right or power against those legal persons;

(2) the civil, administrative or arbitration proceedings brought against any legal person belonging to the group; and

(3) the execution, forced or voluntary, of judgments and other juridical acts on which the law confers the same force and effect as a judgment against those legal persons.

2018, c. 23, s. 376.

40.16. Unless otherwise provided in this Act, compensation may not, during the resolution operations, be claimed from legal persons belonging to the cooperative group, but the legal persons may claim compensation.

They may not, however, claim an amount to which they would not have been entitled had it not been for the impossibility to claim compensation from them.

2018, c. 23, s. 376.

40.17. Unless otherwise provided in this Act, no one may, during the resolution operations, terminate a contract entered into with a legal person belonging to the cooperative group, amend it, or cause the legal person to lose the benefit of the term stipulated in the contract for any of the following reasons:

(1) insolvency or deteriorated financial position of the legal person, any other legal person in the group, the group, its guarantor or any providers of credit support;

(2) a default, before the resolution operations were implemented, by the legal person or another legal person belonging to the cooperative group in the performance of obligations under the contract, unless it is a monetary default that is not remedied within the first 60 days of the resolution operations;

(3) the resolution board's order to implement the resolution operations;

(4) any resolution operation; or

(5) the conversion of any of the legal person's securities or liabilities in accordance with their terms.

The provisions of a contract to which such a legal person is a party that are inconsistent with the provisions of the first paragraph and provisions which, for the reasons described in the first paragraph, cause the legal person to lose a right or create new obligations for the institution are inoperative.

2018, c. 23, s. 376.

40.18. Unless otherwise provided in this Act, no legal person or organization of which a legal person belonging to the cooperative group is a member at the time the resolution operations are implemented may, for the reasons described in the first paragraph of section 40.17, withdraw the legal person's membership or otherwise cause it to lose its membership or the rights it confers.

The provisions of a constituting act or of the by-laws of a legal person or organization of which the legal person belonging to the cooperative group is a member that are inconsistent with the provisions of the first paragraph and provisions which, for the reasons described in the first paragraph of section 40.17, cause the legal person to lose a right or create new obligations for the legal person are inoperative.

2018, c. 23, s. 376.

40.19. Sections 40.15 to 40.18 do not prohibit requiring that a legal person belonging to the cooperative group pay a sum of money as consideration for a prestation.

They do not require the lending of a sum of money or the provision of any service that would be provided on credit because of the resolution operations.

2018, c. 23, s. 376.

40.20. A security agreement on the property of a legal person belonging to the cooperative group and the rights it confers on that legal person's creditor are exempt from the application of sections 40.15 to 40.17 in either of the following cases:

(1) the security guarantees a claim of the Bank of Canada or the Authority; or

(2) the agreement has been exempted from the application of those sections under section 40.21.

2018, c. 23, s. 376.

40.21. At the request of a legal person belonging to the cooperative group, the Authority may, if so authorized by the resolution board, exempt a security agreement on that legal person's property from the application of sections 40.15 to 40.17. The Authority may not exercise that power during the resolution operations.

As a result of that exemption, the Authority is not required to ensure that the secured obligation will be assumed by a third person, or to provide the third person with financial assistance enabling it to perform that obligation.

2018, c. 23, s. 376.

40.22. A regulation of the Authority is to specify how sections 40.15 to 40.18 are to apply to the financial contracts the Authority determines by regulation.

2018, c. 23, s. 376.

40.23. The Authority may exempt a legal person belonging to the cooperative group from the application of any part of sections 40.15 to 40.18 to the extent provided by the resolution plan or, failing that, if it has received prior authorization from the resolution board to do so.

2018, c. 23, s. 376.

40.24. The Superior Court may, on the conditions it considers appropriate, authorize a person to do anything that the person would otherwise be prohibited from doing under sections 40.15 to 40.18, if it is satisfied that

(1) the person would suffer serious injury if the authorization was not granted; or

(2) it is equitable on other grounds to grant the authorization.

The Authority is a party to any application under the first paragraph as a defendant and is entitled to receive notice of the application in the manner the Court considers appropriate.

2018, c. 23, s. 376.

§ 4. — *Resolution operations*

2018, c. 23, s. 376.

I. — *Consent, authorization and approval*

2018, c. 23, s. 376.

40.25. The Authority may implement any resolution operation without the consent, authorization or approval of anyone if the operation is in the resolution plan, or with the sole authorization of the resolution board if it is not in the resolution plan, despite any other Act applicable to the Authority or to any such operation.

The Authority may, subject to the same conditions, exercise all the powers that are conferred by the Act respecting financial services cooperatives (chapter C-67.3) on the federation or on the security fund belonging to the cooperative group.

The first paragraph of section 39 of the Act respecting the regulation of the financial sector (chapitre E-6.1) and sections 77.1 to 77.3 of the Financial Administration Act (chapter A-6.001) apply to the Authority only if it makes a borrowing or an investment, an acquisition or transfer of assets or a financial commitment that was neither provided for in the resolution plan nor authorized by the resolution board.

2018, c. 23, s. 376.

II. — *Amalgamation/continuance and amalgamation/winding-up*

2018, c. 23, s. 376.

40.26. The Authority may amalgamate all the financial services cooperatives as well as the security fund belonging to the same cooperative group and have them continued as one Québec savings company. The Authority may also do so with regard to any part of those legal persons that it determines.

That amalgamation/continuance process requires articles of amalgamation/continuance.

2018, c. 23, s. 376.

40.27. The articles of amalgamation/continuance must contain the provisions required to be set out in the articles of constitution of a business corporation that elects to become regulated by Title III of the Trust Companies and Savings Companies Act (chapter S-29.02), except the particulars concerning the founders.

They must also contain the following information as regards the shares issued by the amalgamating financial services cooperatives:

(1) the manner in which they are to be converted into shares of the Québec savings company resulting from the amalgamation/continuance;

(2) if the shares of one of the financial services cooperatives are not to be wholly converted into shares of the savings company, the amount of money or other form of payment the holders of those shares will be entitled to receive in addition to or instead of shares of the Québec savings company resulting from the amalgamation/continuance;

(3) if applicable, the amount of money or other form of payment that is to be received instead of fractional shares of the Québec savings company resulting from the amalgamation/continuance; and

(4) if applicable, a provision stating that any shares of a financial services cooperative held by another legal person belonging to the cooperative group are to be cancelled when the amalgamation/continuance becomes effective without any repayment of capital in respect of those shares, and that such shares are not to be converted into shares of the Québec savings company resulting from the amalgamation/continuance.

2018, c. 23, s. 376.

40.28. After having prepared the articles of amalgamation/continuance, the Authority shall prepare, in duplicate, a certificate attesting the amalgamation/ continuance and stating its date of effect, which may be subsequent to the date on which the certificate is made.

The Authority shall send a copy of the articles and of the certificate attesting the amalgamation/ continuance to the enterprise registrar, who shall deposit them in the enterprise register.

2018, c. 23, s. 376.

40.29. As of the date of effect shown on the certificate,

(1) all the legal persons involved in the amalgamation/continuance are continued as one Québec savings company and their patrimonies are joined together to form the patrimony of that savings company; and

(2) the rights and obligations of the legal persons involved in the amalgamation/continuance become rights and obligations of the Québec savings company resulting from the amalgamation/continuance and the latter becomes a party to any judicial or administrative proceeding to which those legal persons were parties.

2018, c. 23, s. 376.

40.30. The Québec savings company resulting from the amalgamation/continuance shall exercise the rights and perform the obligations under the name of the financial services cooperative or the security fund which, before the amalgamation/continuance, held those rights or owed those obligations.

The savings company shall exercise the rights it has acquired and perform the obligations to which it is bound after the amalgamation/continuance under the name that is assigned to it in the articles of amalgamation/continuance.

Creditors of a financial services cooperative or of the security fund before the amalgamation/continuance may file a judicial application against the savings company, whether under the latter's name or under the name of the cooperative or fund.

2018, c. 23, s. 376.

40.31. The Québec savings company resulting from the amalgamation/continuance shall have its head office at the place where the federation had its head office before the amalgamation/continuance.

For the purpose of determining the court having territorial jurisdiction in Québec to hear a judicial application based on a right held or obligation owed by a financial services cooperative or the security fund before the amalgamation/continuance, the court of the cooperative's or fund's domicile before the amalgamation also has jurisdiction, at the plaintiff's option.

2018, c. 23, s. 376.

40.32. The Authority may, as the receiver of the federation and the fund under section 40.14, exercise the power conferred on them by section 547.47 of the Act respecting financial services cooperatives (chapter C-67.3) to carry out an amalgamation/winding-up not only with respect to all the financial services cooperatives belonging to the cooperative group and the fund, but also with respect to any number of those legal persons that it determines.

If the amalgamation/winding-up does not involve all the legal persons belonging to the group, the declaration of amalgamation/winding-up required under section 547.48 of that Act must specify the legal persons involved. The other provisions of that same Act relating to an amalgamation/winding-up apply with the necessary modifications.

2018, c. 23, s. 376.

40.33. The provisions of this Act that are applicable, in the event of resolution, to a legal person belonging to a cooperative group apply to any other legal person in which the legal person belonging to that group has been continued, even if, because of such a continuance, the cooperative group as defined by law ceases to exist.

Those provisions continue to apply to the legal persons that belonged to the group and were not continued or dissolved at the time it ceased to exist.

2018, c. 23, s. 376.

III. — *Establishment and operation of a bridge institution and an asset management company*

2018, c. 23, s. 376.

40.34. The Authority may establish one of the following deposit institutions in order to have it assume the liabilities, in relation to deposits of money, of a deposit institution belonging to the cooperative group:

(1) a financial services cooperative;

(2) a Québec savings company; or

(3) a trust company.

Such a deposit institution is referred to as a "bridge institution". The Authority shall grant the authorization referred to in section 28 to the bridge institution as soon as it is established and without an application being filed by that deposit institution.

2018, c. 23, s. 376.

40.35. The Authority acting alone may found a financial services cooperative that is to be a bridge institution. If the cooperative is a credit union, it is not required to be a member of a federation.

As and when the cooperative that is the bridge institution assumes liabilities in relation to deposits of money, the depositors concerned become members of that cooperative by operation of law.

Sections 7, 8, 11 to 15, 33 to 37, 186 to 190, 195 and 286 of the Act respecting financial services cooperatives (chapter C-67.3) do not apply to a cooperative that is a bridge institution.

2018, c. 23, s. 376.

40.36. If the Authority acts as the founder of a business corporation that will be a trust company or a Québec savings company, sections 162 to 181 of the Trust Companies and Savings Companies Act (chapter S-29.02) do not apply. In addition, if the business corporation is to be a trust company, the Authority shall grant it the authorization required under section 17 of that Act as soon as it is incorporated and without an application being filed by the corporation.

2018, c. 23, s. 376.

40.37. The Authority may establish a business corporation with a view to transferring any part of the assets or liabilities of a legal person belonging to the cooperative group to the corporation, except liabilities in relation to deposits of money.

For the purposes of this Act, such a corporation is called an "asset management company".

2018, c. 23, s. 376.

40.38. The Authority shall be the receiver of the bridge institution and of the asset management company, unless it designates a person to act as receiver.

The receiver is then vested with the powers provided for in paragraphs 1 to 9 of section 19.2 of the Act respecting the regulation of the financial sector (chapter E-6.1), and sections 19.3 to 19.5 and 19.9 of that Act apply to the receivership thus established, except any reference to an order from the Superior Court.

2018, c. 23, s. 376.

40.39. Despite any contrary provision, bridge institutions and asset management companies are not mandataries of the Authority or of the State.

Likewise, the legislative provisions applicable to a body for any of the following reasons do not apply to a bridge institution or an asset management company:

(1) at least half of its expenditures are borne directly or indirectly by the Consolidated Revenue Fund;

(2) at least half of its financing, resources or share capital is derived from that fund; or

(3) its capital stock forms part of the domain of the State.

2018, c. 23, s. 376.

IV. — *Transfer of a legal person's assets and liabilities*

2018, c. 23, s. 376.

40.40. The Authority may transfer the assets and liabilities of a legal person belonging to the cooperative group to any acquirer. It may also renounce the exercise of a right or concede a right in an asset or a liability.

A transfer or concession may relate to specific assets or liabilities or a universality of assets and liabilities. The Authority is not limited as to the number of such acts it may perform.

A transfer, renunciation or concession may be by gratuitous or onerous title.

A regulation of the Authority may specify the terms and conditions applicable to transfers of the financial contracts referred to in section 40.22.

2018, c. 23, s. 376; 2019, c. 2, s. 2.

40.41. If a transfer or concession is made between the legal person and, as the case may be, the Authority, the bridge institution or the asset management company, the Authority shall unilaterally determine the assets or liabilities to be transferred, the rights to be conceded, the consideration to be paid as well as the other terms of the contract.

If a transfer or a concession is made with a third person, the Authority may, on behalf of the legal person, agree on the terms of the contract.

2018, c. 23, s. 376.

40.42. Unless the Authority decides otherwise, the transfer of an asset purges the real rights charging it, unless the asset is part of a universality and the rights charging it secure the liabilities that are part of that universality.

2018, c. 23, s. 376.

40.43. If the Authority transfers to a bridge institution all the deposits of money that are guaranteed by the Authority and entered, at the time the bridge institution is established, in the registers of a same deposit institution belonging to the cooperative group, the deposits and withdrawals made with the latter deposit institution until that time but not yet entered in its registers, as well as the deposits and withdrawals made after that time, are deemed to have been made with the bridge institution. The bridge institution is responsible for the interest accruing on those deposits.

2018, c. 23, s. 376.

40.44. A bridge institution that assumes a liability in relation to a deposit of money that is not entirely guaranteed by the Authority is subrogated pleno jure in all the rights of the depositor against the deposit institution with which the deposit was made for the entire deposit.

Despite the first paragraph of article 1658 of the Civil Code, the depositor may not exercise his or her rights against the deposit institution belonging to the cooperative group, unless the bridge institution receives an amount equal to the non-guaranteed part of the deposit.

2018, c. 23, s. 376.

40.45. Despite any contrary provision of this Act, the assumption by a bridge institution of a liability in relation to a deposit of money does not grant a depositor a guarantee that is superior to the guarantee the depositor would have been granted had the bridge institution not assumed the liability.

2018, c. 23, s. 376.

40.46. Sections 40.15 to 40.19 and 40.24 apply, with the necessary modifications, to any acquirer of the assets and liabilities of a legal person belonging to the cooperative group who, because of such an acquisition, becomes a party to a proceeding to which that legal person was a party, becomes a party to a contract to which that legal person was a party or becomes a member of a legal person or of any other organization of which that legal person was a member.

The prohibition under the first paragraph of section 40.15 and the suspension under the second paragraph of that section are only effective for 90 days from the date of acquisition, but the acquirer may renounce it.

2018, c. 23, s. 376.

V. — *Guarantees and other financial obligations of the Authority*

2018, c. 23, s. 376.

40.47. To enable a member of Payments Canada to act as a clearing agent on behalf of a deposit institution belonging to the cooperative group, or on behalf of the bridge institution, the Authority may, in accordance with the Canadian Payments Act (R.S.C. 1985, c. C-21) and Payments Canada's rules and regulations, undertake to

(1) unconditionally guarantee the deposit institution's obligations to the clearing agent as clearing agent; or

(2) ensure that the deposit institution's obligations to the clearing agent as clearing agent are assumed by the bridge institution.

2018, c. 23, s. 376.

40.48. The Authority may incur any financial obligation necessary to ensure the implementation of the resolution plan.

2018, c. 23, s. 376.

VI. — *Transfer and conversion of securities and of certain debts*

2018, c. 23, s. 376; 2021, c. 34, s. 116.

40.49. The Authority may order the transfer, in its favour, in favour of the bridge institution or in favour of the asset management company, of any part that it determines of the shares and subordinated debt obligations issued by the deposit institutions belonging to the cooperative group.

The transfer takes place as soon as it is entered in the issuer's registers and, as a result, the acquirer of those shares or obligations becomes a protected purchaser within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements (chapter T-11.002).

2018, c. 23, s. 376.

40.50. The Authority may convert any part of the shares issued by a deposit institution belonging to the cooperative group into contributed capital securities of that deposit institution, of another such institution belonging to that group or of a legal person constituted or resulting from an amalgamation/continuance or other conversion carried out for the purposes of the resolution.

The Authority may convert any part of the negotiable and transferable unsecured debts that belong, at the time of issue, to a class prescribed by regulation of the Authority, into contributed capital securities of the deposit institution that issued them, of another such institution belonging to the cooperative group or of a legal person constituted or resulting from an amalgamation/ continuance or other conversion carried out for the purposes of the resolution.

2018, c. 23, s. 376; 2019, c. 2, s. 3; 2021, c. 34, s. 117.

40.51. The Authority must prescribe an indemnification plan by regulation and determine the holders of securities issued by deposit institutions belonging to the cooperative group and the creditors of those institutions that are eligible for the plan.

Only eligible holders of securities and creditors that, because of the resolution operations, are in a worse financial position than they would have been had the deposit institution belonging to the cooperative group been liquidated or wound up are entitled to receive an indemnity.

2018, c. 23, s. 376.

§ 5. — *Closure of resolution operations*

2018, c. 23, s. 376.

40.52. The Authority shall notify the resolution board when it considers that the resolution operations are finished with respect to a legal person belonging to the cooperative group.

2018, c. 23, s. 376.

40.53. The resolution board shall order the closure of the resolution operations with respect to a legal person when it considers that it is in the public interest to do so.

2018, c. 23, s. 376.

40.54. The order of the resolution board is, for all purposes, final and conclusive and may not be questioned or reviewed in any court. It must be recorded in writing and a copy of the writing must be sent to the Authority, which must publish it without delay in its bulletin.

As soon as the decision is published, the provisions of this division cease to apply to the legal person named in it.

2018, c. 23, s. 376.

§ 6. — *Administration of resolution operations and immunities*

2018, c. 23, s. 376.

40.55. The Authority shall recover, out of the assets of any legal person belonging to the cooperative group and in priority to all other claims, all the costs, charges and expenses properly incurred by the Authority in connection with the resolution operations.

2018, c. 23, s. 376.

40.56. During the resolution operations, the resolution board may ask the Authority to provide any information the board considers desirable to obtain.

2018, c. 23, s. 376.

40.57. Neither the Authority nor the Government are liable for the obligations of legal persons belonging to the cooperative group.

2018, c. 23, s. 376.

TITLE IV

ENFORCEMENT AND REGULATIONS

2018, c. 23, s. 376.

CHAPTER I

RETURNS

2018, c. 23, s. 376.

41. Every authorized deposit institution, other than a financial services cooperative, authorized insurer or authorized trust company, at the times determined by the regulations, shall furnish the Authority with a detailed return of its operations containing the information prescribed by the regulations, accompanied by the financial statements made in the form prescribed by regulation and the report of the institution's auditor.

1966-67, c. 73, s. 39; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2016, c. 7, s. 221; 2018, c. 23, s. 377; 2021, c. 34, s. 118.

41.1. Every authorized deposit institution shall also file, at the times determined by the Authority, any statement or return determined by the Authority.

1983, c. 10, s. 27; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2018, c. 23, s. 378.

41.2. The Authority may require any additional information or explanation it determines in respect of the return contemplated in section 41 or the documents accompanying it or of the statement or return contemplated in section 41.1. The institution must furnish them to the Authority within such time as the latter may determine.

1983, c. 10, s. 27; 2002, c. 45, s. 198; 2004, c. 37, s. 90.

41.2.1. Every authorized deposit institution must, on the date prescribed in section 41 for sending the detailed return of its operations or, in the case of a financial services cooperative, on the date prescribed in section 166 of the Act respecting financial services cooperatives (chapter C-67.3) for transmitting its annual report and on the date that is six months after the date that is applicable to it, notify the Authority of the names and addresses of the groups of which it has become the holder of control in accordance with subparagraph 1, if the operation does not have a significant effect on the institution, and subparagraphs 2 to 5 of the first paragraph of section 1.5 during the last six months of the period covered by that report or, as the case may be, during the six months following the period covered by that report.

2024, c. 15, s. 85.

41.3. The Authority may audit or commission an audit of any book, register, account, contract, record or other document of an authorized deposit institution if, in its opinion, the execution of its obligation under a guarantee seems unavoidable. It must notify the Minister of the audit.

The expenses incurred for the audit are determined by the Authority and charged to the authorized deposit institution.

2009, c. 58, s. 21; 2018, c. 23, s. 379.

42. *(Repealed).*

1966-67, c. 73, s. 40; 1983, c. 10, s. 28; 1988, c. 64, s. 552; 2000, c. 29, s. 722; 2002, c. 45, s. 192; 2004, c. 37, s. 90; 2009, c. 58, s. 22; 2018, c. 23, s. 380; 2021, c. 34, s. 119; 2024, c. 15, s. 118.

CHAPTER II

INSTRUCTIONS, GUIDELINES AND ORDERS

2018, c. 23, s. 381.

42.1. The Authority may establish instructions for an authorized deposit institution or a federation of which such an institution is a member.

Instructions must be in writing and must be specific to the addressee, but need not be published.

The Authority must, before sending instructions, notify the addressee and give it an opportunity to submit observations.

2018, c. 23, s. 381.

42.2. The Authority may establish guidelines for all authorized deposit institutions, a single class of such institutions or the federations of which such institutions are members.

Guidelines must be general and impersonal; the Authority shall publish them in its bulletin after sending a copy of them to the Minister.

2018, c. 23, s. 381.

42.3. A guideline informs its addressees of measures that, in the Authority's opinion, they may establish to satisfy their obligations under this Act.

Instructions inform their addressee of the obligations that, in the Authority's opinion, are incumbent on it under that Act.

2018, c. 23, s. 381.

42.4. The Authority may order an authorized deposit institution, or the federation of which it is a member, to cease a course of action or to implement specified measures if the Authority is of the opinion that the institution or federation is failing to perform its obligations under this Act in full, properly and without delay.

The Authority may, for the same reasons, issue an order against a third person that, on behalf of an authorized deposit institution, carries on its activities or performs its obligations.

At least 15 days before issuing an order, the Authority shall notify the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the contravener and, if the contravener is a third person acting on behalf of an authorized deposit institution, to that deposit institution in writing, stating the reasons which appear to justify the order, the date on which the order is to take effect and the contravener's right to submit observations.

2018, c. 23, s. 381; 2021, c. 34, s. 120.

42.5. The Authority's order must state the reasons for which it is issued. The order must be served on all those to whom it applies.

The order takes effect on the date it is served or on any later date specified in it.

2018, c. 23, s. 381; 2021, c. 34, s. 121.

42.6. The Authority may, without prior notice, issue a provisional order valid for up to 15 days if, in its opinion, any period of time granted to whoever the order concerns to submit observations may be detrimental.

The order must include reasons and takes effect on the date it is served on whoever it concerns. The latter may, within six days of receiving the order, submit observations to the Authority.

2018, c. 23, s. 381; 2021, c. 34, s. 122.

42.7. The Authority may revoke or amend any order it has issued under this Act.

2018, c. 23, s. 381.

CHAPTER III

CONSERVATORY MEASURES

2018, c. 23, s. 381.

42.8. The Authority, for the purposes or in course of an investigation or when it is informed that an authorized deposit institution is voluntarily dissolving or liquidating or winding up in contravention of section 28.2 or intends to do so, may request the Financial Markets Administrative Tribunal

(1) to order a person or group not to dispose of funds, securities or other property in the person's or group's possession; or

(2) to order a person or group to refrain from withdrawing funds, securities or other property on deposit with or under the control or in the safekeeping of any other person or group.

Such an order takes effect from the time the person or group concerned is notified of it and, unless otherwise provided, remains binding for a 12-month period; the order may be revoked or otherwise amended during that period.

2018, c. 23, s. 381.

42.9. The person or group concerned must be notified at least 15 days before any hearing during which the Tribunal is to consider an application for the renewal of an order.

The Tribunal may renew the order if the person or group concerned has not requested to be heard or has failed to establish that the reasons for the initial order have ceased to exist.

2018, c. 23, s. 381.

42.10. A person or group named in an order issued under section 42.8 who has put a safety deposit box at the disposal of a third person or has allowed a third person to use a safety deposit box shall immediately notify the Authority.

On the Authority's request, the person or the group's duly authorized representative shall open the safety deposit box in the presence of an agent of the Authority, draw up an inventory of the contents in triplicate, and give one copy to the Authority and another to the person or group concerned.

2018, c. 23, s. 381.

42.11. No order applies to funds or securities deposited with a clearinghouse or a transfer agent, unless the order so provides.

2018, c. 23, s. 381.

42.12. An order applies also to funds, securities and other property received after the order becomes effective.

2018, c. 23, s. 381.

42.13. An order that names a bank or another financial institution applies only to the agencies or branches specified.

2018, c. 23, s. 381.

42.14. A person or group directly affected by an order issued under section 42.8, if in doubt as to the application of the order to particular funds, securities or other property, may apply to the Financial Markets Administrative Tribunal for clarification; such a person or group may also apply for an amendment to or the revocation of the order.

A written notice setting out the reasons for the application for amendment or revocation must be filed with the Tribunal. The notice must be served on the Authority at least 15 days before the hearing set to hear the application.

2018, c. 23, s. 381.

42.15. An order issued under section 42.8 is admissible for publication in the same register as that in which rights in the funds, securities or other property covered by the order are required to be published or admissible for publication.

Likewise, the order may be published in a register kept outside Québec if such orders are admissible for publication under the Act governing that register.

2018, c. 23, s. 381.

42.16. In addition to any measure imposed in an order, the Financial Markets Administrative Tribunal may require a person or group named in the order to repay to the Authority the costs incurred in connection with the inspection or investigation that established non-compliance with the provision concerned, according to the tariff set by government regulation.

2018, c. 23, s. 381.

42.17. The Financial Markets Administrative Tribunal may prohibit a person from acting as a director or officer of an authorized deposit institution on the grounds set out in article 329 of the Civil Code or when a sanction has been imposed on the person under this Act.

The prohibition imposed by the Tribunal may not exceed five years.

The Tribunal may, at the request of the person concerned, lift the prohibition on such conditions as it considers appropriate.

2018, c. 23, s. 381.

CHAPTER IV

INJUNCTION AND PARTICIPATION IN PROCEEDINGS

2018, c. 23, s. 381.

42.18. The Authority may apply to a judge of the Superior Court for an injunction in respect of any matter relating to the carrying out of this Act.

The application for an injunction constitutes a proceeding in itself.

The procedure prescribed in the Code of Civil Procedure (chapter C-25.01) applies, except that the Authority cannot be required to give security.

2018, c. 23, s. 381.

42.19. The Authority may, on its own initiative and without notice, intervene in any proceeding relating to a provision of this Act or, if it is applicable to an authorized deposit institution, of the Business Corporations Act (chapter S-31.1) or of another Act of Québec governing the authorized financial institution's constituting act and administered by the Authority.

2018, c. 23, s. 381.

CHAPTER V

CANCELLATION OF A CONTRACT OR SUSPENSION OF ITS PERFORMANCE

2018, c. 23, s. 381.

42.20. The Authority may apply to a court to cancel or suspend the performance of a contract entered into by an authorized deposit institution in contravention of this Act if the Authority shows that the cancellation or suspension is in the interest of the deposit institution's depositors and that, under the circumstances, that interest must prevail over the legal security of parties to the contract and of other persons whose rights and obligations would be affected by the cancellation or suspension.

The cancellation or suspension may not be applied for after the end of the 10th year after the contract concerned came into effect.

The court may also order that directors who are party to such a contract, who have authorized it or who have otherwise facilitated its entering into, be solidarily required to pay the authorized deposit institution the amount of damages awarded as compensation for the injury suffered or the sum paid by the authorized deposit institution because of the contract.

2018, c. 23, s. 381.

CHAPTER VI

REGULATIONS

2018, c. 23, s. 381.

43. In addition to the regulatory powers assigned to it by this Act, the Authority may make regulations for:

(a) determining the conditions that must be fulfilled and the information and documents that must be furnished by any legal person applying for a policy contemplated in section 34 and the conditions required for the issue of the policy;

(a.1) (paragraph repealed);

(a.2) (paragraph repealed);

(b) (paragraph repealed);

(c) (paragraph repealed);

(c.1) (paragraph repealed);

(d) determining the form and tenor of applications for policies, the form and tenor of policies, and the form of applications for authorization;

(e) determining the term of the policies, the conditions upon which they may be terminated and the other provisions which they must contain;

(e.0.1) determining, for the purposes of the second paragraph of section 40.2.1, a method for estimating deposits of money;

(e.1) determining, for the purposes of the application of Chapter II of Title III, the percentage and the amount contemplated in section 40.3, the terms and conditions of payment of the premium, the interest rate exigible in the case of an outstanding premium and, where a legal person becomes an authorized deposit institution during the period, the modalities of computation of the premium it must pay and the basis of such computation;

(e.2) (paragraph repealed);

(e.3) (paragraph repealed);

(f) determining the rates of premiums for the guarantee contemplated in section 34, the modalities of payment of the premium and the rate of interest exigible when a premium is overdue;

(g) determining the books and accounts that authorized deposit institutions other than authorized insurers and authorized trust companies must keep;

(h) (paragraph repealed);

(h.1) determining the rate of interest applicable to a deposit of money for the purposes of section 34.4;

(i) determining the only signs, marks, advertisements or other means of publicity that an authorized deposit institution may use in order to make known that the deposits of money made therewith are guaranteed under this Act;

(i.1) determining the cases in which a document attesting that an authorized deposit institution has received funds from a person must contain an indication, in the form and tenor determined by the Authority, to the effect that it does not constitute a deposit within the meaning of this Act and the regulations;

(j) defining the expression “deposit of money”, subject to the provisions of this Act;

(k) (paragraph repealed);

(l) prescribing, for each class of authorized deposit institutions, the scope of the audit to be made by their auditors for the purposes of the returns or statements which they must furnish to the Authority, and the form of their certificate;

(l.1) determining audit expenses for the purposes of section 41.3;

(m) determining the form of the inspection reports made for the Authority and the information which they must contain;

(m.1*)* determining the mode of apportionment between the authorized deposit institutions or classes of institutions of the expenses incurred for the inspection of the affairs of the authorized deposit institutions and the proportions, conditions and dates of their collection;

(m.2*) (paragraph repealed);*

(n) (paragraph repealed);

(n.1*)* determining, in addition to the provisions of section 37, the cases or circumstances in which deposits continue to be guaranteed, and fixing the term and the conditions of such continuance;

(n.2*) (paragraph repealed);*

(o) determining which provisions of this Act, the regulations or a policy issued under section 34 shall cease to apply to an institution with respect to deposits which continue to be guaranteed under section 37;

(p) prescribing the cases in which a deposit made by a person with an institution or with a bank may be considered, for the purposes of this Act, as separate from any other deposit made by the same person with the same institution or with the same bank;

(q) determining the information, documents and evidence that must be furnished by a depositor who demands payment in execution of the guarantee provided under this Act;

(r) determining the form and tenor of claims and the cases in which a depositor who demands payment in execution of the guarantee provided under this Act is not required to file a claim form with the Authority;

(s) (paragraph repealed);

(s.1*)* clarifying the application of sections 40.15 to 40.18 to the financial contracts it determines;

(s.2*)* providing for the classes of negotiable and transferable unsecured debts that may be converted into contributed capital securities under the second paragraph of section 40.50;

(s.3*)* providing for the indemnification plan for the holders of shares or securities transferred under section 40.49 or the holders of shares that were converted under the first paragraph of section 40.50 and for creditors whose debts were converted under the second paragraph of that section;

(t) prescribing any form which it deems appropriate for the application of this Act;

(u) determining the standards applicable to authorized deposit institutions in relation to their commercial practices and their management practices.

1966-67, c. 73, s. 41; 1968, c. 71, s. 9; 1974, c. 72, s. 3; 1981, c. 30, s. 2; 1982, c. 52, s. 54; 1983, c. 10, s. 29; 1984, c. 47, s. 14; 1987, c. 95, s. 374; 1999, c. 40, s. 27; 2000, c. 29, s. 621; 2002, c. 45, s. 193; 2004, c. 37, s. 90; 2009, c. 58, s. 23; 2018, c. 23, s. 382; 2021, c. 34, s. 123.

44. *(Repealed).*

1974, c. 72, s. 4; 1988, c. 64, s. 553.

45. A regulation of the Authority under this Act must be submitted for approval to the Minister, who may approve it with or without amendment.

However, a regulation of the Authority under paragraph *l*.1 of section 43 must be submitted for approval to the Government, which may approve it with or without amendment.

A draft of a regulation referred to in the first paragraph may not be submitted for approval and the regulation may not be made before the expiry of 30 days after the publication of the draft regulation. The regulation comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date determined in the regulation. Sections 4, 8, 11 and 17 to 19 of the Regulations Act (chapter R-18.1) do not apply to the regulation.

The Minister may make a regulation referred to in the first paragraph if the Authority fails to act within the prescribed time.

The Government may make a regulation referred to in the second paragraph if the Authority fails to act within the prescribed time.

1966-67, c. 73, s. 42; 2002, c. 45, s. 194; 2004, c. 37, s. 90; 2009, c. 58, s. 24; 2018, c. 23, s. 383.

45.1. *(Repealed).*

2009, c. 58, s. 25; 2018, c. 23, s. 384.

TITLE V

PROHIBITIONS, MONETARY ADMINISTRATIVE PENALTIES AND PENAL PROVISIONS

2018, c. 23, s. 385.

CHAPTER I

PROHIBITIONS

2018, c. 23, s. 385.

45.2. No one may falsely purport, in any manner whatsoever, that the deposits of money received by them are guaranteed under this Act.

2018, c. 23, s. 385.

45.3. No one may, if not covered by the second paragraph, hold themselves out as a deposit institution or use a name that includes those words. Similarly, no one may, if not covered by the third paragraph, hold themselves out as a savings company or use a name that includes those words.

The following may hold themselves out as a deposit institution or use a name that includes those words:

(1) an authorized deposit institution;

(2) a bank within the meaning of the Bank Act (S.C. 1991, c. 46); and

(3) a legal person constituted under the laws of a jurisdiction other than Québec that is authorized under those laws to carry on deposit institution activities and that exercises rights and performs obligations in Québec without such exercise and performance constituting deposit institution activities.

The following may hold themselves out as a savings company or use a name that includes those words:

(1) a corporation regulated by Title III of the Trust Companies and Savings Companies Act (chapter S-29.02) that only applies for or obtains the Authority's authorization to carry on deposit institution activities;

(2) an authorized deposit institution that is a legal person referred to in subparagraph 6 of the first paragraph of section 24; and

(3) a legal person referred to in subparagraph 3 of the second paragraph.

2018, c. 23, s. 385.

CHAPTER II

MONETARY ADMINISTRATIVE PENALTIES

2018, c. 23, s. 385.

DIVISION I

FAILURES TO COMPLY

2018, c. 23, s. 385.

45.4. A monetary administrative penalty of $250 in the case of a natural person and $1,000 in any other case may be imposed on

(1) an authorized deposit institution

(a) that, in contravention of section 28.19, fails to send the Authority a report on its complaint processing policy,

(b) whose ethics committee, in contravention of section 28.51, fails to send the Authority a report on its activities,

(c) that, in contravention of section 28.63, fails to notify the Authority of the end of the auditor's term, or

(d) that, in contravention of section 41, fails to furnish the Authority with a detailed return of its operations at the times determined by the regulations; or

(2) an authorized deposit institution, the holder of control of the deposit institution, a member of its financial group, or its auditor, if it or he or she refuses to communicate or provide access to a document or information required by the Authority for the purposes of this Act.

The penalties prescribed by the first paragraph also apply if the information or documents concerned are incomplete, or are not sent before the specified time limit.

2018, c. 23, s. 385.

45.5. A monetary administrative penalty of $2,500 may be imposed on an authorized deposit institution

(1) that fails to perform its obligations under an undertaking given to the Authority under section 28.1, 28.46, 28.86 or 30.7;

(2) that, in contravention of section 28.11, fails to adopt a complaint processing policy or that, in contravention of section 28.29, fails to adopt an investment policy approved by its board of directors or whose ethics committee, in contravention of section 28.48, fails to adopt rules of ethics;

(3) that, in contravention of section 28.11, fails to keep the complaints register prescribed by that section;

(4) if, in contravention of section 28.38, neither a director nor a committee has reported to the board of directors on the responsibility conferred on the director or committee of seeing that sound commercial practices and sound and prudent management practices are adhered to and situations contrary to such practices are detected; or

(5) that, without the Authority's authorization under section 28.46, has not, in contravention of section 28.44, established an audit committee or an ethics committee or has established one whose composition contravenes section 28.45.

2018, c. 23, s. 385.

45.6. A monetary administrative penalty of $5,000 may be imposed on an authorized deposit institution

(1) that holds contributed capital securities issued by a legal person or partnership, participations in a trust or a share in a co-ownership acquired in contravention of the limits prescribed by section 28.31 without such holdings being authorized by section 28.32;

(2) more than half of whose board of directors, in contravention of section 28.42, is not composed of persons other than its employees or employees of a group of which it is the holder of control;

(3) for which no auditor, in contravention of section 28.59, has been charged with the functions provided for in that section or for which an auditor has been charged with those functions but does not have the qualifications required under section 28.60; or

(4) that, in contravention of any of sections 30.2 to 30.6, fails to notify the Authority of any of the operations described in section 29, sends the Authority an incomplete notice of intention or fails to comply with the time limit prescribed by section 30.1 for filing the notice of intention although it is not exempted from filing such a notice under the latter section.

2018, c. 23, s. 385.

45.7. A monetary administrative penalty of $2,000 in the case of a natural person and $10,000 in any other case may be imposed on anyone who fails to comply with an order or other decision of the Authority.

2018, c. 23, s. 385.

45.8. If a failure to comply for which a monetary administrative penalty may be imposed continues for more than one day, it constitutes a new failure for each day it continues.

2018, c. 23, s. 385.

45.9. The Minister or the Authority may, in a regulation made under this Act, specify that a failure to comply with the regulation may give rise to a monetary administrative penalty.

The regulation may define the conditions for applying the penalty and set forth the amounts or the methods for determining them. The amounts may vary according to the seriousness of the failure to comply, without exceeding the maximum amounts provided for in section 45.7.

2018, c. 23, s. 385.

DIVISION II

NOTICE OF NON-COMPLIANCE AND IMPOSITION

2018, c. 23, s. 385.

45.10. In the event of a failure to comply referred to in Division I, a notice of non-compliance may be notified to the party responsible for the failure urging that the necessary measures be taken immediately to remedy it.

Such a notice must mention that the failure may give rise to a monetary administrative penalty.

2018, c. 23, s. 385.

45.11. The imposition of a monetary administrative penalty is prescribed by two years from the date of the failure to comply.

2018, c. 23, s. 385.

45.12. The monetary administrative penalty for a failure to comply with a provision of this Act may not be imposed on the party responsible for a failure to comply if a statement of offence has already been served for a failure to comply with the same provision on the same day, based on the same facts.

For the purposes of this chapter, "party responsible for a failure to comply" means the person or group on whom or which a monetary administrative penalty is imposed or may be imposed, as the case may be, for a failure to comply referred to in Division I.

2018, c. 23, s. 385.

45.13. A monetary administrative penalty is imposed on the party responsible for a failure to comply by the notification of a notice of claim.

The notice must state

(1) the amount of the claim;

(2) the reasons for it;

(3) the time from which it bears interest;

(4) the right, under section 45.14, to obtain a review of the decision to impose the penalty and the time limit for exercising that right; and

(5) the right to contest the review decision before the Financial Markets Administrative Tribunal and the time limit for bringing such a proceeding.

The notice must also include information on the procedure for recovery of the amount claimed. The party responsible for the failure to comply must also be informed that failure to pay the amount owing may give rise to the amendment, suspension or revocation of any authorization granted under this Act or to a refusal to grant such an authorization, and, if applicable, that the facts on which the claim is founded may result in penal proceedings.

Unless otherwise provided, the amount owing bears interest at the rate determined under the first paragraph of section 28 of the Tax Administration Act (chapter A-6.002), from the 31st day after notification of the notice.

2018, c. 23, s. 385.

DIVISION III

REVIEW

2018, c. 23, s. 385.

45.14. The party responsible for a failure to comply may apply in writing to the Authority for a review of the decision to impose a monetary administrative penalty within 30 days after notification of the notice of claim.

The persons responsible for the review are designated by the Authority; they must not come under the same administrative authority as the persons responsible for imposing such penalties.

2018, c. 23, s. 385.

45.15. The application for review must be dealt with promptly. After giving the applicant an opportunity to submit observations and produce any documents to complete the record, the person responsible for the review shall render a decision on the basis of the record, unless the person deems it necessary to proceed in some other manner.

2018, c. 23, s. 385.

45.16. The review decision must be written in clear and concise terms, with reasons given, must be notified to the applicant and must state the applicant's right to contest the decision before the Financial Markets Administrative Tribunal and the time limit for bringing such a proceeding.

If the review decision is not rendered within 30 days after receipt of the application or, if applicable, within the time granted to the applicant to submit observations or documents, the interest provided for in the fourth paragraph of section 45.13 on the amount owing ceases to accrue until the decision is rendered.

2018, c. 23, s. 385.

45.17. A review decision that confirms the imposition of a monetary administrative penalty may be contested before the Financial Markets Administrative Tribunal by the party responsible for the failure to comply to which the decision pertains, within 60 days after notification of the review decision.

The Tribunal may only confirm or quash a contested decision.

When rendering its decision, the Tribunal may make a ruling with respect to interest accrued on the penalty while the matter was pending before it.

2018, c. 23, s. 385.

DIVISION IV

RECOVERY

2018, c. 23, s. 385.

45.18. If the party responsible for a failure to comply has defaulted on payment of a monetary administrative penalty, its directors and officers are solidarily liable with that party for the payment of the penalty, unless they establish that they exercised due care and diligence to prevent the failure.

2018, c. 23, s. 385.

45.19. The payment of a monetary administrative penalty is secured by a legal hypothec on the debtor's movable and immovable property.

For the purposes of this division, "debtor" means the party responsible for a failure to comply that is required to pay a monetary administrative penalty and, if applicable, each of its directors and officers who are solidarily liable with that party for the payment of the penalty.

2018, c. 23, s. 385.

45.20. The debtor and the Authority may enter into a payment agreement with regard to a monetary administrative penalty owing. Such an agreement, or the payment of the amount owing, does not constitute, for the purposes of any other administrative penalty under this Act, an acknowledgement of the facts giving rise to it.

2018, c. 23, s. 385.

45.21. If the monetary administrative penalty owing is not paid in its entirety or the payment agreement is not adhered to, the Authority may issue a recovery certificate on the expiry of the time for applying for a review of the decision to impose the penalty, on the expiry of the time for contesting the review decision before the Financial Markets Administrative Tribunal or on the expiry of 30 days after the final decision of the Tribunal confirming all or part of the decision to impose the penalty or the review decision, as applicable.

However, a recovery certificate may be issued before the expiry of the time referred to in the first paragraph if the Authority is of the opinion that the debtor is attempting to evade payment.

A recovery certificate must state the debtor's name and address and the amount of the debt.

2018, c. 23, s. 385.

45.22. Once a recovery certificate has been issued, any refund owed to a debtor by the Minister of Revenue may, in accordance with section 31 of the Tax Administration Act, be withheld for payment of the amount due referred to in the certificate.

Such withholding interrupts the prescription provided for in the Civil Code with regard to the recovery of an amount owing.

2018, c. 23, s. 385.

45.23. On the filing of the recovery certificate at the office of the competent court, together with a copy of the final decision stating the amount of the debt, the decision becomes enforceable as if it were a final judgment of that court not subject to appeal, and has all the effects of such a judgment.

2018, c. 23, s. 385.

45.24. The debtor is required to pay a recovery charge in the cases, under the conditions and in the amount determined by regulation of the Minister.

2018, c. 23, s. 385.

DIVISION V

REGISTER

2018, c. 23, s. 385.

45.25. The Authority shall keep a register relating to monetary administrative penalties.

The register must contain at least the following information:

(1) the date the penalty was imposed;

(2) the date and nature of the failure, and the legislative provisions under which the penalty was imposed;

(3) if the penalty was imposed on a legal person, its name and the address of its head office or that of one of its establishments or of the business establishment of one of its agents;

(4) if the penalty was imposed on a natural person, the person's name, the name of the municipality in whose territory the person resides and, if the failure occurred during the ordinary course of business of the person's enterprise, the enterprise's name and address;

(5) the amount of the penalty imposed;

(6) the date of receipt of an application for review and the date and conclusions of the decision;

(7) the date a proceeding is brought before the Financial Markets Administrative Tribunal and the date and conclusions of the decision rendered by the Tribunal, as soon as the Authority is made aware of the information;

(8) the date a proceeding is brought against the decision rendered by the Financial Markets Administrative Tribunal, the nature of the proceeding and the date and conclusions of the decision rendered by the court concerned, as soon as the Authority is made aware of the information; and

(9) any other information the Authority considers of public interest.

The information contained in the register is public information as of the time the decision imposing the penalty becomes final.

2018, c. 23, s. 385.

CHAPTER III

PENAL PROVISIONS

2018, c. 23, s. 385.

46. The secretary of an authorized deposit institution who contravenes the second paragraph of section 28.67 by refusing or neglecting to provide the declaration sent to him or her by an auditor in accordance with section 28.66 or who destroys or falsifies the declaration commits an offence and is liable to a fine of $1,000 to $10,000.

1966-67, c. 73, s. 43; 1983, c. 10, s. 30; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2018, c. 23, s. 385.

46.1. Anyone who

(1) fails to comply with a request made under section 28.15,

(2) dismisses an auditor otherwise than in accordance with section 28.65, or

(3) fails to notify the Authority in accordance with section 28.80 or to notify it of an operation described in subparagraph 5 of the first paragraph of section 29, in accordance with section 30.6,

commits an offence and is liable to a fine of $2,500 to $25,000 in the case of a natural person and $7,500 to $75,000 in any other case.

2018, c. 23, s. 385.

46.2. Anyone who

(1) contravenes section 45.2 or 45.3,

(2) solicits or receives deposits of money from the public without being authorized to carry on deposit institution activities,

(3) provides a document or information that they know is false or inaccurate, or access to such a document or information, to the Minister or the Authority, a member of the Minister's or Authority's staff or a person appointed by the Minister or Authority in the course of activities governed by this Act, or

(4) hinders or attempts to hinder, in any manner, the exercise of a function by a member of the Autority's staff or by a person appointed by the Authority for the purposes of this Act,

commits an offence and is liable to a fine of $5,000 to $50,000 in the case of a natural person and $15,000 to $150,000 in any other case.

2018, c. 23, s. 385.

46.3. Anyone who

(1) contravenes an order, or

(2) carries on deposit institution activities although the authorization required under this Act has been refused or revoked, or carries on deposit institution activities beyond what this Act authorizes if the authorization is suspended,

commits an offence and is liable, in the case of a natural person, to a fine of $5,000 to $100,000 or, despite article 231 of the Code of Penal Procedure (chapter C-25.1), to a maximum term of imprisonment of 18 months, or to both the fine and imprisonment, and, in any other case, to a fine of $30,000 to $2,000,000.

An authorized deposit institution that, in contravention of section 28.2, decides to dissolve or liquidates or winds up voluntarily commits an offence and is liable to the fine prescribed in the first paragraph.

A director of such a deposit institution who gives his or her assent to the dissolution or liquidation or winding-up in contravention of section 28.2 commits an offence and is liable to the fine and imprisonment prescribed in the first paragraph; the same shall apply to a liquidator who agrees to proceed with such a liquidation or winding-up.

2018, c. 23, s. 385.

46.4. Despite sections 46 to 46.3, the Minister may determine the regulatory provisions made under this Act whose contravention constitutes an offence and renders the offender liable to a fine the minimum and maximum amounts of which are set by the Minister. The Government may also provide that, despite article 231 of the Code of Penal Procedure (chapter C-25.1), a contravention renders the offender liable to a term of imprisonment, or both the fine and imprisonment.

The maximum penalties under the first paragraph may vary according to the seriousness of the offence, without exceeding those prescribed in section 46.3.

2018, c. 23, s. 385.

46.5. The fines prescribed by sections 46 to 46.3 or the regulations are doubled for a second offence and tripled for a subsequent offence. The maximum term of imprisonment is five years less a day for a second or subsequent offence.

If an offender commits an offence under this Act after having previously been found guilty of any such offence and if, without regard to the amounts prescribed for a second or subsequent offence, the minimum fine to which the offender was liable for the first offence was equal to or greater than the minimum fine prescribed for the second offence, the minimum and maximum fines and, if applicable, the term of imprisonment prescribed for the second offence become, if the prosecutor so requests, those prescribed in the case of a second or subsequent offence.

This section applies to prior findings of guilty pronounced in the two-year period preceding the second offence or, if the minimum fine to which the offender was liable for the prior offence is that prescribed in section 46.3, in the five-year period preceding the second offence. Fines for a third or subsequent offence apply if the penalty imposed for the prior offence was the penalty for a second or subsequent offence.

2018, c. 23, s. 385.

46.6. If an offence under this Act is committed by a director or officer of a legal person or of another group, regardless of its juridical form, the minimum and maximum fines that would apply in the case of a natural person are doubled.

2018, c. 23, s. 385.

46.7. If an offence under this Act continues for more than one day, it constitutes a separate offence for each day it continues.

2018, c. 23, s. 385.

46.8. Anyone who, by an act or an omission, helps or, by encouragement, advice, consent, authorization or order, induces another person to commit an offence under this Act commits an offence and is liable to the same penalty as that prescribed for the offence they helped or induced the person to commit.

2018, c. 23, s. 385.

46.9. In any penal proceedings relating to an offence under this Act, proof that the offence was committed by an agent, mandatary or employee of any party is sufficient to establish that it was committed by that party, unless the party establishes that it exercised due diligence, taking all necessary precautions to prevent the offence.

2018, c. 23, s. 385.

47. If a legal person or an agent, mandatary or employee of a legal person, of a partnership or of an association without legal personality commits an offence under this Act, the directors of the legal person, partnership or association are presumed to have committed the offence unless it is established that they exercised due diligence, taking all necessary precautions to prevent the offence.

For the purposes of this section, in the case of a partnership, all partners, except special partners, are presumed to be directors of the partnership unless there is evidence to the contrary appointing one or more of them, or a third person, to manage the affairs of the partnership.

1966-67, c. 73, s. 44; 1999, c. 40, s. 27; 2018, c. 23, s. 385.

47.1. In determining the penalty, the judge shall take into account aggravating factors such as

(1) the intentional, negligent or reckless nature of the offence;

(2) the foreseeable character of the offence or the failure to follow recommendations or warnings to prevent it;

(3) the offender’s attempts to cover up the offence or failure to mitigate its consequences;

(4) the increase in revenues or decrease in expenses that the offender intended to obtain by committing the offence or by omitting to take measures to prevent it; and

(5) the offender's failure to take reasonable measures to prevent the commission of the offence or mitigate its consequences despite the offender's ability to do so.

A judge who, despite the presence of an aggravating factor, decides to impose the minimum fine must give reasons for the decision.

2018, c. 23, s. 385.

47.2. On an application made by the prosecutor and submitted with the statement of offence, the judge may impose on the offender, in addition to any other penalty, a further fine not exceeding the financial benefit realized by the offender as a result of the offence, even if the maximum fine has also been imposed.

2018, c. 23, s. 385.

48. When determining a fine higher than the minimum fine prescribed in this Act, or when determining the time within which an amount must be paid, the judge may take into account the offender's inability to pay, provided the offender furnishes proof of assets and liabilities.

1966-67, c. 73, s. 45; 1983, c. 10, s. 31; 1990, c. 4, s. 71; 2008, c. 7, s. 16; 2018, c. 23, s. 385.

48.1. Penal proceedings may be instituted by the Authority for an offence under this Act.

2008, c. 7, s. 16.

48.2. The fine imposed by the court is remitted to the Authority if it has taken charge of the prosecution.

2008, c. 7, s. 16.

48.3. Penal proceedings for an offence under a provision of this Act are prescribed three years from the date the investigation record relating to the offence was opened. However, no proceedings may be instituted if more than five years have elapsed since the date of the offence.

The certificate of the secretary of the Authority indicating the date on which the investigation record was opened constitutes conclusive proof of the date, in the absence of any evidence to the contrary.

2008, c. 7, s. 16; 2018, c. 23, s. 386.

49. *(Repealed).*

1966-67, c. 73, s. 46; 1983, c. 10, s. 31; 1992, c. 61, s. 67.

50. *(Repealed).*

1966-67, c. 73, s. 47; 1983, c. 10, s. 31; 1990, c. 4, s. 72.

51. *(Repealed).*

1966-67, c. 73, s. 48; 1983, c. 10, s. 32; 2002, c. 45, s. 195; 2004, c. 37, s. 90; 2009, c. 58, s. 26.

TITLE VI

DEPOSIT INSURANCE FUND AND OTHER FINANCIAL PROVISIONS

1983, c. 10, s. 33; 2018, c. 23, s. 387.

52. The Authority shall maintain a deposit insurance fund.

All the Authority's financial obligations under Title III, under section 45.2 or under Title VI, except section 56.1, shall be discharged out of the deposit insurance fund.

1966-67, c. 73, s. 49; 1983, c. 10, s. 34; 2002, c. 45, s. 196; 2004, c. 37, s. 90; 2018, c. 23, s. 388.

52.1. The premiums collected by the Authority in accordance with Chapter II of Title III are paid into the deposit insurance fund together with any sums the Minister of Finance may, with the authorization of the Government and on such conditions as the latter may determine, pay into it from time to time.

1983, c. 10, s. 34; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2018, c. 23, s. 389.

52.2. The Authority shall keep an account called the "accumulated net income account" with which is credited all income including any profits made on the sale of securities, and to which are charged any operating expenses, losses or special funds for losses related to the activities of the Authority and any losses in the sale of securities.

Any accumulated net income must be entered as a separate item in any of the Authority's statements of assets and liabilities and must be listed as being added to or subtracted from the deposit insurance fund.

1983, c. 10, s. 34; 2002, c. 45, s. 198; 2004, c. 37, s. 90.

53. When the resources of the Authority are insufficient for the payment of its obligations or the exercise of the powers assigned to it by section 40.5, the Minister of Finance, with the authorization of the Government and on such conditions as it determines, may make to the Authority, out of the Consolidated Revenue Fund, the advances necessary for such purpose.

1966-67, c. 73, s. 50; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2018, c. 23, s. 390.

54. The Minister of Finance, with the authorization of the Government and on such conditions as it determines, may guarantee the payment of any commitment of the Authority; the sums which the Government may be required to pay under such guarantee shall be taken out of the Consolidated Revenue Fund.

1966-67, c. 73, s. 51; 1977, c. 5, s. 14; 2002, c. 45, s. 198; 2004, c. 37, s. 90.

55. *(Repealed).*

1966-67, c. 73, s. 52; 1981, c. 30, s. 3; 2009, c. 58, s. 26.

56. The Authority shall invest the sums making up the deposit insurance fund in accordance with section 38.6 of the Act respecting the regulation of the financial sector (chapter E-6.1).

1966-67, c. 73, s. 53; 1977, c. 5, s. 14; 1988, c. 64, s. 587; 2000, c. 29, s. 622; 2002, c. 45, s. 197; 2004, c. 37, s. 90; 2008, c. 7, s. 17; 2018, c. 23, s. 811.

56.1. The costs that must be incurred by the Authority for the administration of the provisions of this Act other than Titles III and VI and section 45.2 are to be borne by the authorized deposit institutions; they are determined annually by the Government based on the forecasts provided to it by the Authority.

Such costs, for each deposit institution, correspond to the sum of the minimum contribution set by the Government and the proportion of those costs corresponding to the proportion that the deposit institution's gross income in Québec for the preceding year is of the aggregate of the similar income of all the authorized deposit institutions for the same period.

The difference noted between the forecast of the costs that must be incurred for the administration of this Act for a year and those actually incurred for the same year must be carried over to similar costs determined by the Government for the year after the difference is noted.

The certificate of the Authority shall definitively establish the amount payable by each deposit institution under this section.

The Government may apportion the costs it determines under the first paragraph differently among deposit institutions depending on whether they are only authorized to carry on deposit institution activities, whether they are also authorized to carry on insurer activities or trust company activities or whether they are financial services cooperatives.

2018, c. 23, s. 391.

TITLE VII

FINAL PROVISIONS

2018, c. 23, s. 391.

56.2. The Minister, with the Government's approval, may make agreements with the government of another province or a territory of Canada or with the government of a foreign State allowing a cooperative having a similar mission to that of a financial services cooperative and constituted under an Act of that province, territory or State to obtain the authorization prescribed in section 28.

The Minister may make such an agreement only if

(1) the laws of that province, territory or State grant financial services cooperatives constituted under the laws of Québec a status equivalent to the status granted by those laws to cooperatives constituted under the laws of that province, territory or State;

(2) deposits received in Québec by the cooperative constituted under the laws of that province, territory or State are guaranteed or insured by the body or agency of that province, territory or State which administers a scheme equivalent to the one provided for by this Act.

2018, c. 23, s. 391.

57. The Authority, with the approval of the Government, may make agreements with any other government in Canada which, in its opinion, administers an equivalent scheme, with a view to facilitating the application of this Act or of any similar law administered by such other government. The Authority may also, with the approval of the Government, make such agreements with any body which, in its opinion, administers an equivalent scheme. Such agreement may in particular:

(a) determine the cases in which the total guarantee which may be granted to a person who has made several deposits of money in the same institution or bank must be limited to the sum of $100,000 in principal and interest, when such deposits are guaranteed in part by the application of the provisions of this Act and in part by the application of the provisions of an equivalent scheme;

(b) establish, in the cases contemplated in paragraph *a*, standards respecting the apportionment, between the Authority and any other body charged with guaranteeing deposits of money under an equivalent scheme, of the obligations resulting from the guarantees granted by such bodies;

(c) prescribe the criteria by which the place where a deposit of money is made or the place where it is payable shall be determined for the purposes of this Act and of any equivalent scheme;

(d) establish means of ensuring collaboration between the Authority and any other body charged with guaranteeing deposits of money under an equivalent scheme, in the surveillance and inspection of institutions.

To give effect to such agreement, the Authority, by regulation, may determine the manner in which this Act shall apply to any case contemplated by the agreement.

1966-67, c. 73, s. 55; 1968, c. 71, s. 10; 1983, c. 10, s. 35; 2002, c. 70, s. 157; 2002, c. 45, s. 198; 2004, c. 37, s. 90; 2007, c. 15, s. 19; 2009, c. 58, s. 27.

58. The Minister of Finance shall have charge of the carrying out of this Act.

1966-67, c. 73, s. 56; 1966-67, c. 72, s. 23; 1975, c. 76, s. 11; 1981, c. 9, s. 24; 1982, c. 52, s. 52.

59. *(This section ceased to have effect on 17 April 1987).*

1982, c. 21, s. 1; U. K., 1982, c. 11, Sch. B, Part I, s. 33.

REPEAL SCHEDULE

In accordance with section 17 of the Act respecting the consolidation of the statutes (chapter R-3), chapter 73 of the statutes of 1966/1967, in force on 31 December 1977, is repealed, except sections 54 and 57, effective from the coming into force of chapter A-26 of the Revised Statutes.